OUTLINES

OF THE

COURSE OF LECTURES

ON

CONVEYANCING,

ESTABLISHED

BY THE SOCIETY OF CLERKS TO THE SIGNET.

WITH A

CONCENTRATED VIEW

OF THE

CLAUSES OF DEEDS.

BY ROBERT BELL, CLERK TO THE SIGNET.

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TO THE SOCIETY

OF

CLERKS TO HIS MAJESTY'S SIGNET.

GENTLEMEN,

I conceive myſelf bound to render you an account of the plan of teaching which I have adopted, in the Claſs of Conveyancing committed to my care; an Inſtitution, ſo capable in its own nature, of anſwering the beneficial purpoſes you had in view.

Six years of labour on this ſubject, have ſhown me how much teaching is itſelf a ſcience, and although I now underſtand enough of the duties you have impoſed, to look back, with aſtoniſhment at my own temerity, the views that have opened upon me, give me ſome hope, that I may be able to promote the object of the Inſtitution.

Permit me thus publicly to expreſs my gratitude to the Society, and to intreat their attention to theſe outlines, as the only means by which I can communicate to thoſe immerſed in buſineſs, any idea of the manner in which I am to perform the taſk I have undertaken.

I am, with reſpect,

Gentlemen,

Your obliged and very humble ſervant,

October 1800. ROBERT BELL.

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INTRODUCTION.

IN treating of a ſcience hitherto ſo little the object of regular ſtudy as Conveyancing, I muſt be allowed to offer a few introductory remarks relating to its hiſtory; to explain the general nature and effect of our deeds, ſo far as that may be neceſſary for underſtanding the arrangement I have followed; and to preſent to the ſtudent ſuch obſervations, as may impreſs upon his mind, the neceſſity of thoſe taſks, to which he muſt ſubmit.

I. CONVEYANCING originates with ſociety itſelf, and follows its progreſs from rudeneſs to refinement. The tranſactions of an early period, we naturally conceive to be extremely ſimple; requiring no ceremony; relating to preſent objects merely, and leading to no diſtant conſequences. The exchange of one thing for another, may conſtitute the only conveyances of early times, and poſſeſſion be received as the ſole teſt of property. But as ſociety advances, the irkſomeneſs of a queſtionable title will be felt; and we may conceive the people calling on the ſtate to witneſs their tranſactions; making their ſales in the gates of the city, or in other places of public reſort; deviſing peculiar modes of expreſſion, and particular ceremonies, as the pledges of faith and obligation; and eſtabliſhing, as they advance in the arts of life, the evidence of their property, on written vouchers.

Thus the natural progreſs ſeems to be, from the uſe of appropriated words of conveyance, attended with certain fixed and eſtabliſhed ſolemnities, to written deeds, which are the ultimate, and come by degrees, to be the moſt ſecure means of preſerving the evidence of tranſactions.

1. THIS Theory is amply ſupported by the actual progreſs of Roman conveyancing. In the earlieſt times of Rome, of which any information has reached our day, agreements were entered into, and property transferred with much form and

ſolemnity; nothing was thought binding in law, that was not fortified by the uſe of appropriated words and ceremonies; no buſineſs, public or private, judicial or domeſtic, was carried on, no tranſaction, no contract, no transferenee was made, without its ſpecial form.

Theſe ceremonies were uſeful, only as they expreſſed the peculiar nature of the contract, to which they were interpoſed, or as they were accompanied with ſolemn words, expreſſive of the agreements of parties. The formulæ or ſolemn words of contracts, were digeſted with infinite care and art, and fitted with appropriated forms of action; and the cuſtody and application of them to the common buſineſs of life, ſerved the Patricians of Rome, as an engine of political power. Theſe formulæ, with an anxiety proportioned to the importance of the object, were long kept from the knowledge of the Plebeians. But, on two occaſions, they were publiſhed ſurreptitiouſly, and the Flavian and the Ælian codes, formed the practical body of conveyancing for ſeveral centuries.

When writing came to be introduced into the buſineſs of Rome, and written deeds to be ſubſtituted to the antient ſolemn words, it was a change of evidence, rather than of forms that took place. The old formulæ, were merely digeſted into writing, and accompanied with an account of the ceremonies uſed in token of conſent. We are familiar with ſuch a change in the *breve teſtatum* of the middle ages; which was merely an inſtrument in writing, bearing evidence of the feudal entry in preſence of the *pares curiæ*. The revolution in the Roman conveyancing, was of the ſame nature, and becomes intereſting to us, from being, in truth, the firſt link of that chain which reaches down to our own times. I ſhall give two examples, as ſufficient to illuſtrate what I have now ſaid; one from the ſtipulation, the form by which obligations were conſtituted; the other from the ſale.

In the ſtipulation of the early law, the parties appeared in preſence of the witneſſes; the ears of the witneſſes were touched; they were deſired to attend to what paſſed; and a ſolemn queſtion was then put by the one party, to which a correſ-

ponding anſwer was made by the other. For inſtance, if it was a loan of money that was to be ſettled, the lender ſaid, "Quinque aureos dare ſpondes?" To which the borrower anſwered, "Spondeo," or "Quinque aureos dare ſpondeo." And a ſmall rod, or wand, was broken between the parties, in token of the ceremony being finiſhed, and the obligation complete.

In the more advanced ages of the Roman law, we find examples of the ſtipulation, after it was reduced to writing. Thus, in the Pandects, a bond of borrowed money is preſerved. The money is lent by Julius Zoſa, the ſlave and factor of Julius Quinctilianus, to Flavius Candidus. The deed is in theſe terms: "Chryſogonus Flavii Candidi ſervus "actor ſcripſit coram ſubſcribente et adſignante domino meo, "accepiſſe eum a Julio Zoſa, rem agente Julii Quinctiliani "abſentis mutua denaria mille; quæ dari Quinctiliano "heredive ejus ad quem ea res pertinebit, kalendis Novem- "bribus quæ proximæ ſunt futuræ, ſtipulatus eſt Zôſas "libertus, et rem agens Quinctiliani; ſpopondit Candidus "dominus meus."—Beſides this principal obligation, another was added for the intereſt: "Sub die ſupraſcripta ſi ſatis eo "nomine factum non erit tunc quo poſt ſolvetur uſurarum "nomine denarios octo præſtari ſtipulatus eſt Julius Zoſas. "Spopondit Flavius Candidus dominus meus, ſubſcripſit et "dominus." Lib. xlv. ff. tit. i. l. 123. § 2.

In the ſame way, under the old law, the ſale, like the ſtipulation, was concluded with peculiar ceremonies. Sales were of two kinds; the Mancipatio, and the Cessio in Jure. The former was uſed for transferring Roman property, the fields in the neighbourhood of Rome, and afterwards the land in any part of Italy. The latter was leſs ſolemn, and was generally uſed for the tranſmiſſion of moveable property.

In the Mancipatio, the parties went before the prætor, and carrying with them five witneſſes, to repreſent the five tribes; with a perſon to hold the balance for weighing the price, and another whoſe province it was to call the witneſſes, and beſpeak their attention and recollection; the purchaſer ad-

dreſſed them in theſe words, " Hanc ego rem ex jure Qui-
" ritium meam eſſe aio, eaque mihi empta eſto hoc ære æreaque
" libra." On ſaying this, he ſtruck the balance with a piece of money, and then preſented it to the ſeller by way of purchaſe-money. The ſeller's acceptance of the money was a proof of his acquieſcence in the ſale; and the magiſtrate approving of the ſale, and putting the buyer into poſſeſſion of the ſubject, the ſale was complete. The anteteſtatus then touched the ears of the witneſſes, and ſaid, " Memento et
" mihi in illa cauſa teſtis eris."

The Ceſſio in jure, which was leſs ſolemn, was alſo carried on in preſence of the judge.

As in the ſtipulation, we find the change from the verbal to the written deed, an alteration merely of the evidence of the contract; ſo we find it to have happened preciſely, in reſpect to the ſale. This will be proved from a deed, which has been often referred to. The ſale of a monument, by Statia Irene, to Marcus Licinius Timotheus, ſo early as the middle of the third century of the Chriſtian æra; and we ſhall ſee that it contains merely the forms of the old ſale expreſſed in writing. The ſubject is thus deſcribed *: " Monumentum
" quot eſt via triumphali, inter miliarium ſecundum et tertium,
" euntibus ab urbe parta laeva," &c. The tradition is made in preſence of the libripens and anteteſtatus. " Statia Irene
" jus liberorum habens Marco Licinio Timotheo donationis
" mancipationiſque cauſa ſeſtertio nummo uno mancipio dedit
" Libripende Claudio Dativo, Anteteſtato Cornelio Victore;
" inque vacuam poſſeſſionem monumenti ſupra ſcripti ceſſit et
" ad id monumentum itum aditum ambitum adque hauſtum
" coronare veſci mortuum mortuos mortuaſque oſſa inferre ut
" liceat. Quod monumentum ſupra ſcriptum ſeſtertio nummo
" uno mancipio dediſti a te herede tuo & ab his omnibus
" ad quos ea res pertinebit hæc ſic recte dari fieri præſtarique
" ſtipulatus eſt Licinius Timotheus. Spopondit Statia Irene
" jus Liberorum habens—Actum pridie kalend. Auguſt." &c.

* Maffei, Iſtor. Diplom. p. 42.

This will be ſufficient to explain, what might be confirmed by innumerable inſtances, that theſe written deeds were originally nothing more than the evidence of the compliance with thoſe forms, which had been in practice before the uſe of writing was introduced into Rome.

2. In tracing thus far the hiſtory of Roman deeds, we have in fact traced the hiſtory of our own forms; ſince from thoſe ours may be deduced in an uninterrupted ſucceſſion. Nor need we wonder at this, when we conſider the nature of private deeds, and the means by which the Roman forms have been ſpread over Europe.

The laws of private property, and the forms by which that property is transferred, are of a nature very different from the conſtitutional law of the ſtate. The government is transformed from a republic to a monarchy. The kingdom itſelf becomes the province of a new kingdom; or it paſſes through all the miſeries of revolutions, or of invaſions, ſtill the ſame forms are uſed in the transference of property, and queſtions of private right are regulated by the ſame laws. They are too minute to be the object of revolutionary ſtorms, and too much interwoven with ſociety itſelf to be torn down while that is allowed to exiſt. It is, therefore, only by gradual, and almoſt imperceptible ſteps, that any change can take place on this part of our law.

But, independently of this, the connection betwixt antient and modern forms is to be attributed, in a great degree, to the influence of the civil law, and to the example and practice of the clergy.

The fall of the empire was not immediately followed by a change in the manners of Europe, nor by a complete oblivion of all the knowledge and learning of Rome. The Theodoſian code had been publiſhed in the year 438; and it was at the diſtance of a century that Juſtinian made his compilation.

In the eaſt, no change of importance was made on the laws of Juſtinian for three centuries; but in the 867 they were ſu-

perſeded by a new compilation, called the Baſiliks, which remained in uſe till the 1453, when Mahomet II. having made himſelf maſter of Conſtantinople, the Roman law was extinguiſhed in that quarter of the world.

In the weſtern empire, the fate of the law was different. We are, in general, by the vague way of ſpeaking about the loſs of the pandects, miſled into a notion that this was the entire loſs of the Roman law to the natives of the weſt. But the pandects were never greatly favoured in the weſtern empire; for the Romans, and with them all the nations in the weſt, preferred the Theodoſian code. This was received as the code of the Roman law, before the pandects were compoſed, and cheriſhed as containing the antient law, ſacred in their eyes as the inſtitutions of their forefathers; while the new compilations of Juſtinian were conſidered as a foreign, and leſs reputable collection.

The Theodoſian code was accordingly known and obſerved at a time when the pandects no longer appeared in Italy; and it was by gradual ſteps, and in the increaſing darkneſs of Europe, that at a late period this code alſo was loſt: But not till the Roman law had been ſo known in practice, and ſo rooted in the cuſtoms and manners of the people, that many of the nations of Europe may be ſaid to have lived under that law, although they had preſerved no written code of it.

Thus Italy, during the firſt part of the ſixth century, was in the poſſeſſion of the Goths; but as that people had formerly been the auxiliaries of the empire, and had lived and mixed with the Romans, the laws and manners of the empire were preſerved. Italy was then, for a ſhort period, annexed to the eaſtern empire by Beliſarius and Narſes: But, in the 568, it was ſeized on by the Lombards, who retained poſſeſſion of the greater part of it for 200 years; and during this period, not only was Rome in the poſſeſſion of the Church, but the Lombards, to render their yoke lighter, modelled their laws by the Theodoſian code, and wrote them in Latin.

France, again, had its monarchy eſtabliſhed ſo early as the 486; for it was at that time that Clovis I., king of the

Franks, defeated Syagrius the Roman uſurper, and eſtabliſhed the kingdom of the Franks. France had at this time been long a Roman province, and governed by Roman laws; and Clovis, who was as politic as brave, bent to the cuſtoms of the conquered, became himſelf a Chriſtian, and permitted the inhabitants to retain their old laws, or to adopt thoſe of the Franks, as they thought proper. In this manner was the Roman law preſerved in France, until the new empire in the weſt was founded by Charlemagne, in the beginning of the ninth century; when, by an ordonance, he expreſſed his deſire, that the Roman law ſhould be followed through the whole of the empire; that is, through Germany, France, and Italy: and from the ninth century to the preſent, the civil law has been conſidered as the common law of France.

While the knowledge of the Roman law was thus preſerved in thoſe countries, it had alſo, in a conſiderable degree, influenced the juriſprudence of this iſland. From the time that Clodius deſtroyed the Druids (the antient judges and lawyers of this country), the Roman law was alone obſerved, during the time that the Romans remained in Britain; and it was adminiſtered here by ſome of their greateſt lawyers. So deeply had it taken root, that after the Romans had retired, the Saxons, who had ſettled themſelves in the country, were forced, in order to render their laws palatable, to incorporate many of the Roman laws into their ſyſtem of juriſprudence; and, in fact, we find many of the principles and forms of the common law fairly deducible from that ſource.

Here, then, as in the neighbouring nations, the Roman law was planted, during the time that this iſland was poſſeſſed as a Roman province; and at no period has it been entirely eradicated.

From this review, it will be apparent how much the juriſprudence of this iſland has been affected by the Roman law; and it will be eaſily admitted, that, with the laws of that people, we muſt alſo have received their forms of deeds. But, independently of a concluſion ſo obvious, and ſeemingly ſo juſt, we have, in the practice and example of the Church, a

a chain of connection ſtill more direct. The Church was in poſſeſſion of Rome at a period when the Roman laws and forms were in their vigour. It was by theſe forms that her rights were eſtabliſhed; and, by the clerical notaries, the ſame forms were introduced into the private practice of Europe.

The clerical or apoſtolical notaries roſe on the ruins of the civil notaries; an inſtitution which, under the empire, had poſſeſſed many valuable privileges, and acquired much influence in the buſineſs of Rome. The apoſtolical notaries were, on their firſt appointment, reſtricted to ſpiritual matters: But, as the authority of the Pope gained ſtrength, they began to receive acts, civil as well as eccleſiaſtical; their number increaſed; and the reputation of their ſanctity gave them quickly a ſuperiority over the ſecular notaries, and they became at laſt the only conveyancers in Europe.

One of theſe eccleſiaſtical notaries, Marculfus (who was a monk of Paris) collected, in the 660, thoſe forms which he had been uſing during a long life, and preſented them to the biſhop of Paris, for the uſe of the clergy. Theſe forms have received univerſal credit, and have been explained and commented on by many eminent foreign lawyers.

From theſe forms, we come to the real deeds of the middle ages, which have been collected as the records of the laws and manners and hiſtory of thoſe times; and which have been brought forward ſtill more anxiouſly by the diſputes amongſt the churchmen, in regard to the antiquity and extent of their different eſtabliſhments, as appearing in the grants they had received, or the deeds they had executed. From theſe diſputes ſprung up a new ſcience, containing the rules by which real were to be diſtinguiſhed from falſe deeds. This is the diplomatic art, in which extenſive learning, and the moſt acute ingenuity have been employed in the inveſtigation of ancient laws and deeds, and inſcriptions, diſplaying, in a moſt luminous manner, the cuſtoms and deeds of thoſe times.

As we come nearer to the preſent day, we meet with more frequent collections of the forms uſed by foreign notaries; and in this manner we poſſeſs a chain of deeds, explaining to us the

connection betwixt our own forms and thoſe of antient Rome.

3. The forms of deeds have been more an object of attention in England, than in this country. The Engliſh were averſe to the Roman law; and enough of its ſpirit did not remain, at the time of the Saxon invaſion, to ſuperſede their own peculiar inſtitutions. The brieves and writs of the Engliſh law are intimately connected with the ſpirit of their juriſprudence, and with the peculiarities of the national inſtitutions; and, as ſuch, have been much cheriſhed, and ſtudied, and commented on. But in Scotland, though our laws and forms at one time correſponded with thoſe of England, many cauſes united in producing that change which has rendered the laws of the two countries ſo diſſimilar. On the one hand, the rivalſhip betwixt the two nations; and, on the other, the intercourſe and friendſhip which ſubſiſted betwixt France and this country; gave us a prejudice againſt the juriſprudence of England, and a reliſh for whatever was French. This appeared even in our national inſtitutions. The Court of Seſſion was modelled after the Parliament of Paris. It was in the French univerſities that our young men ſtudied law; and, by the influence of the clerical judges of the new court, the civil law (the only law with which they were acquainted) ſuperſeded the common law; ſignet letters were ſubſtituted for brieves; and all our antient judicial modes of proceeding, and forms of action, ſunk from that moment into oblivion. I make this remark, not as implying any reflection on our preſent laws and forms; for I ſincerely believe, that both of them have been truly improved, by the innovation to which I allude; but I mention it as accounting for that almoſt total neglect into which, with us, the ſtudy of writs, and of forms, has fallen.

I ſhall not dwell on the confuſed hiſtory of our older conveyancing. It is a ſubject with regard to which little information could be gleaned; and that little could not be intereſting. Our churchmen were learned and induſtrious, and full of am-

bition, like the other popiſh clergy of Europe; and did not neglect that ſource of power which the management of deeds in thoſe times naturally afforded. While our deeds remained in their hands, a perfect ſimilarity to thoſe on the continent is to be expected. But the progreſs, by which they came into the management of laics, is loſt; though we may conjecture, that this department muſt naturally have devolved on the clerks to the ſignet, ſince they formed part of the national eſtabliſhment; and it was through them that the royal gifts and charters neceſſarily paſſed.

Previous to the time of Dallas, there was nothing publiſhed that could have aided the ſtudent in acquiring a knowledge of Conveyancing. Conveyancing was then a myſtery, the ſecrets of which were preſerved with infinite care; Dallas even hints at this in one of his introductory addreſſes, where he ſays, "And whereas, I am informed the whole "work, by its method and advantage, thereby accruing "to all perſons, may prejudge the calling, I muſt ſay it was "never intended, and cannot have that effect." And to do away completely the objection, he finds it neceſſary to ſtate, that he meant to educate his ſon to the profeſſion; thence inferring, that he could not mean to do it any injury. The fact certainly was, that at that time, every writing chamber had a ſyſtem of forms, which the young man, on entering upon the ſtudy of his profeſſion, was obliged to tranſcribe.

Theſe illiberal ideas of myſtery and concealment, and this mechanical plan of initiation in the art and practice of Conveyancing, ſtood as bars to the improvement of the Science. Conveyancing, in ſuch hands, inſtead of being connected with the principles and ſpirit of the law, would neceſſarily be depreſſed and retarded in its progreſs; and, to thoſe few only who were initiated, by admiſſion into a chamber, poſſeſſed of proper forms; and under the direction of one who had aſſiduouſly ſtudied his profeſſion, could any knowledge in this Science be attainable.

But, a more liberal ſpirit aroſe. The writers to the ſignet, were not only well informed Conveyancers, but their views

opened to the improvement of their profeſſion, as an important branch of the practical juriſprudence of their country. Much attention was beſtowed by them upon the private inſtruction of the young men intruſted to their care; but, as this is a taſk which, although it may be performed by a few men, ardent in the performance of their duty, can never be generally complied with, amidſt the diſtractions and cares of buſineſs, the idea gradually acquired ſtrength, that it would be of public benefit, to have ſome proper inſtitution for the teaching of Conveyancing, and the inſtructing of young men, during their apprenticeſhip, in the principles of the profeſſion.

The firſt propoſal, in relation to this matter, that appears on the records of our Society, was made in the 1748 *. We are not informed of any objection having ever been ſtarted to this propoſal; on the contrary, it was approved of by a

* On the 8th February 1748, there is the following entry in the minutes of the Society: "It was motioned by a member, that "as the endurance of every apprentice's ſervice was of ſhort con-"tinuance, (at this time the endurance of the apprenticeſhip was "for three years only), there was ſcarce any time to be allowed by "their maſters for ſtudying the practice of ſtyles; and, therefore, "before they apply to be admitted as writers to the ſignet, they "ought to be taught that practical part of education by ſome pro-"feſſor of ſtyles."—"The meeting approved of the motion, and "appointed the above committee to bring in an overture to the "next general meeting, directing the manner of that affair." The committee appointed on this occaſion, were all of them, men high in their profeſſion, and ſome of them ſo perfectly ſatisfied of the propriety of this meaſure, and of the advantages to be derived from it, that they gave private Lectures on Conveyancing to the young gentlemen committed to their care. This committee conſiſted of Meſſ. John M'Farlane, A. Stevenſon, Hugh Crawford, G. Chalmers, Robert Dunbar, Ronald Crauford, John M'Kenzie, and Samuel Mitchelſon. The overture was drawn up and delivered to the deputy-keeper on the 12th November 1750; the committee is continued, and the matter ordered to be brought before a general meeting; but, after a renewal of the order, there is no further appearance of it in the minutes.

general meeting, and the buſineſs being left to a moſt reſpectable committee, an overture was drawn up by them. That overture, however, being put into the hands of the deputy-keeper, the matter, after two or three renewals of the order, was forgotten, and no further procedure, in regard to that motion, ever took place.

In the 1773, when Mr M'Kenzie of Delvine, (who had been one of the committee in the 1748), was appointed deputy-keeper of the ſignet, his firſt object was to bring forward a plan for Lectures on Conveyancing †. The ſhape of

† The minutes of the meeting of the Society on the 29th November 1773, contain the following paragraph. It is a repreſentation made to the Society by Mr M'Kenzie of Delvine, the deputy-keeper; "That judging it would be conducive, to the proper "education of ſuch young gentlemen as aſpire to be members "of this Soiety, if, in the courſe of their attendance on the Scots "Law claſs, the profeſſor, beſides his ordinary prelections on that "law, would aſſign a ſeparate hour for examining them on the "ſubject of theſe prelections, and to ſuch an examination, would "add a College on Styles: That having converſed with the pro-"feſſor on this matter, he had found him willing to undertake a "a ſeparate claſs on theſe two heads, and to prepare himſelf for it "againſt the beginning of next winter ſeſſion, providing the So-"ciety approved of the meaſure, and that a ſuitable gratification "were allowed to him for his trouble: That, as to this laſt, in his "apprehenſion, the ſmall additional ſum of two guineas yearly, "over and above the three guineas for his Scots Law claſs, might "be a ſuitable gratification for this ſeparate claſs; which would "bring only an additional expence of four guineas in whole on the "apprentice during his apprenticeſhip: That this, however, as "well as the meaſure itſelf, he ſubmitted to the deciſion of the So-"ciety. The meeting, after reaſoning on this matter, appointed "Meſſrs Colquhoun Grant, Samuel Mitchelſon, junior, and Pa-"trick Kerr, as a committee, to whom they remitted the further "conſideration of it, and to report their opinion thereon in wri-"ting to the keeper and commiſſioners, on or before the 20th Ja-"nuary."

The report was not made till the 27th June 1774, when it enters the minutes in theſe terms: "The committee appointed to

the propoſal, which was now made, was, that the profeſſor of Scottiſh Law ſhould inſtitute a "College of Styles." This was readily agreed to on the part of the profeſſor; who would cheerfully have undertaken the taſk, provided the Society had bound their apprentices to attend two courſes of lectures at two guineas each; but, unfortunately at that time, they had raiſed, or were in the act of raiſing, their apprentice fee from L. 80 to L. 100, and they ſeem to have been afraid, that by impoſing ſtill further burdens on the apprentice, they might diminiſh the number of apprentices. Perhaps, too, they might heſitate to place in the hands of a perſon, out of their own Society, the exerciſe of a duty, which ſo materially interfered with their own privileges. But whatever may have been the prevailing motives for rejecting this propoſal, the principle of the preſent eſtabliſhment was completely recogniſed; and the Society declared it to be the duty of the individual members to

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" conſider the propoſal, that the profeſſor of Scots Law ſhould aſſign " a ſeparate hour for examining the ſtudents, who are apprentices " to writers to the ſignet, on the ſubject of his prelections, and " ſhould add to each examination a college on ſtyles, on conſider- " ation of receiving an additional fee of two guineas yearly for his " additional trouble, gave their report, bearing, that they were " very doubtful of the propriety of the Society making this an or- " der or regulation; becauſe they conſidered it to be the duty of " writers to the ſignet, to inſtruct their apprentices in the ſeveral " branches of their buſineſs, and to uſe all neceſſary means by " practice, prelection, and examination, to diſcharge their duty " to their apprentices; and as the knowledge of ſtyles are their " proper province, the regulation propoſed, would, in their ap- " prehenſion, import an acknowledgment of their incapacity, or " of a want of inclination to do their duty; and the committee " took the liberty further to obſerve, that as the expence of edu- " cating young gentlemen to their profeſſion, had been of late " years greatly augmented, they ſubmitted it to conſideration, " how far it would be proper to ſubject them to further expence, " by an act of the Society. The meeting approve of this report."

inſtruct their apprentices by practice, prelections, and examinations.

But although theſe two propoſals failed in their object, they were not uſeleſs to the profeſſion, for they ſeem to have turned the attention of the late Mr Roſs to the ſubject. He prepared, and delivered part of a courſe of lectures on Conveyancing; and, if we are to form any judgment from what has been publiſhed, though unprepared by himſelf for the preſs, and with the unavoidable imperfections of a poſthumous publication, we ſhall ſee much reaſon to regret, that his attention ſhould have been turned to other objects.

The fate of the former propoſals for the accompliſhment of this deſirable object, prove to us, that it was only neceſſary that the country ſhould be a little further advanced, to ripen into a full conviction, the opinion that ſome public inſtitution, for the promotion of the ſtudy of Conveyancing was indiſpenſable. Accordingly, in May 1793, a motion was made for eſtabliſhing a courſe of lectures on Conveyancing, to be delivered by a writer to the ſignet; and, by a ſeries of reſolutions, the inſtitution has been brought to its preſent ſtate *.

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* In May 1793, a motion was made by Mr William M'Donald, for eſtabliſhing a courſe of lectures on Conveyancing, to be delivered by a writer to the ſignet, and upon the motion of Mr Iſaac Grant, the meeting "ORDERED that Mr Bell ſhould be requeſted "to lodge in the hands of the Society the general plan of the lec- "tures he propoſes, the mode and period of delivering them, and "any thing elſe which he thinks can tend to elucidate the buſineſs "which is ſubmitted by him to the conſideration of the Society; "and the Society hope it will be convenient for Mr Bell to put "this plan and ſpecimen into the hands of the clerk, on or before "the firſt day of Auguſt, that it may be printed and diſtributed "amongſt the members."

A plan of a courſe was drawn up, printed, and diſtributed amongſt the members, in the harveſt of that year; and on the 16th December 1793, the following regulation was UNANIMOUSLY made. "RESOLVED, that in future, one of their number ſhall be appoint-

From this ſlight ſketch, the ſtudent will have ſome notion of the hiſtory of the Science he is about to ſtudy. He will perceive in what way the Roman Conveyancing aroſe, and by what means their forms of deeds have been handed down to our times. He will diſcover the reaſon of the inattention with which this important branch of practice has been treat-

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" ed to deliver annually, a courſe of lectures on the theory and " practice of Conveyancing, and to collect the deciſions of the " Court of Seſſion; and APPOINTED Mr Robert Bell to fill theſe " offices."

Under this appointment, lectures were delivered, when, in the 1796, a motion was brought forward by ſome of the members of the Society, who had attended the courſe, (it was made by Mr Ainſlie and ſeconded by Mr Ramſay), for extending the ſame privilege to the claſs of Conveyancing which had formerly been given to the claſſes of Civil and of Scots Law. And, on the 7th July 1796, the Society enacted, " THAT every candidate for the office " of writer to the ſignet, ſhall have attended three courſes of Law " Claſſes, viz. either one courſe of Civil Law, one courſe of Scots " Law, and one courſe of Conveyancing, or two courſes of any " one of theſe claſſes, and a third courſe of either of the other two, " in the option of the candidate, who ſhall produce, with his peti- " tion for leave to enter on his trials, certificates from the Profeſ- " ſor of Scots Law or Civil Law, or from the Lecturer on Convey- " ancing appointed by the Society, of their due attendance on the " claſſes hereby required, and that under the penalties impoſed by the " former laws; BUT, EXCEPTING from the effect of this law, in ſo far " as it requires an attendance on a third courſe, all thoſe whoſe in- " dentures have been entered into prior to the 27th June 1796; at " the ſame time, the Society RECOMMEND to thoſe gentlemen who " fall under this exception, an attendance on the claſs of Conveyan- " cing; AND with regard to thoſe, who have not, previous to the " above date, attended both of the courſes of law claſſes required " by the former laws, they are hereby REQUIRED to ATTEND the " claſs of CONVEYANCING appointed by the Society, in place of " one of the claſſes formerly required, and that under the penalties " of the former laws."

The Society, at the ſame time, gave a ſalary to the lecturer, of L. 100 Sterling.

ed in Scotland. He will ſee that little has hitherto been done; and that to give a form and ſubſtance to this Science, remains a taſk ſtill to be performed.

II. In proceeding to explain the principles of that arrangement which I have followed in my lectures, it will be neceſſary to make ſome preliminary remarks upon the nature of our deeds; for it is by analyzing the deeds themſelves, that the grounds of a juſt arrangement of our ſubject is to be diſcovered.

1. It has been propoſed as a problem generally intereſting to mankind, whether deeds might not be ſo formed as to expreſs the agreements of parties, with ſuch mathematical preciſion as to take away all poſſibility of doubt or litigation †. The conſideration of ſuch a queſtion as this, leads directly to a view and analyſis of the general form and nature of deeds, which has always appeared to me of much importance in facilitating the ſtudy of a ſubject, which, taken in the maſs, muſt appal the moſt vigorous intellect.

In every improved ſyſtem of Conveyancing, deeds muſt have a double object; firſt, to expreſs clearly, the intentions, obligations, and agreements of parties; and ſecondly, to afford a direct and ſimple method of making effectual the object of the deed. The clauſes intended for accompliſhing the latter of theſe purpoſes are uniformly the ſame. The clauſes in which the intention is expreſſed, change as the view

† The problem here alluded to, has been propoſed by the Count de Windiſchgratz, and will be found in the Firſt Volume of the Tranſactions of the Royal Society of Edinburgh, p. 38. "Pro "omni poſſibili inſtrumentorum ſpecie, quibus quis ſe obstringere, "ſuumve dominium in alterum, quibuscunque ex motivis, et qui- "buscunque ſub conditionibus, transferre potest, formulas tales in- "venire, quæ omnibus caſibus individuis conveniant, atque in "quovis caſu, ſingulis duntaxat terminis, iiſque pervulgatis, ex- "pleri opus habeant; qui termini, æque ac ipſæ formularum ex- "preſſiones, ejusmodi ſint, ut, quemadmoduth in matheſi nullum "dubium, nullum litigium locum habeat."

and objects of the parties vary; this distinction in the clauses, of which our deeds consist, I shall endeavour to illustrate.

If we take, as an example, the disposition to a purchaser, it contains a narrative and a dispositive clause, in which the reason for granting the deed, the nature and extent of the right given, and the conditions annexed to it, are expressed. But besides these, the disposition to a purchaser contains the obligation of the seller to infeft the purchaser, so that the subject may be holden, either of the seller or of his superior; a procuratory of resignation for completing the infeftment to be holden of the superior; and a precept of sasine for answering either the one infeftment or the other. There is, besides, an assignation to the rents and title-deeds; a clause of warrandice; by which the right of the purchaser is assured; a clause of registration for preserving the deed, or giving all necessary execution against the seller; and the testing clause, on the regularity of which, and the subscription of the parties and witnesses, the authenticity of the deed depends. It is obvious at one glance, that the procuratory of resignation, the precept of sasine, the clause of warrandice, the assignation to the rents and title-deeds, and the clause of registration, are intended merely to give effect to the dispositive clause. The same may be said of every other heritable right.

The moveable deed, again, is principally composed of the obligation by which the granter becomes bound to pay or to perform; or of the discharge of this obligation; or of the assignment of it by the creditor. Thus, in moveable deeds, there are three clauses, which may be considered as permanent and unchangeable; these are a clause constituting an obligation, a clause assigning that obligation, and a clause discharging it. If we add to these the clause of registration, by which every degree of obligation undertaken in a deed may be enforced, we have all that is peculiar to the personal or moveable deed, all that can be reduced to any regular description of clause: and whatever else may appear in these deeds, arises from the peculiarity of the obligations, counter-obligations, and conditions that parties reciprocally come under to

each other in the common intercourſe of life, and which are reducible to no regular order, the expreſſing of them depending entirely on a knowledge of buſineſs, and of the technical language of Conveyancing.

In this general view of the clauſes of deeds, it is obviouſly in thoſe only, by which the intention of the party is expreſſed, that any material change can be neceſſary; and theſe changes muſt depend on the nature of the tranſaction and the intention of the parties. Hence, were we to indulge in the ſpeculation ſuggeſted by the above problem, and to conceive that all the effects and properties of any particular deed, as founded on the common terms of that deed, or as eſtabliſhed by practice and the deciſions of our courts, were fixed by an act of the legiſlature; ſo that when a party, (for example), expreſſed his will to beſtow the right to an eſtate, as by a diſpoſition, all the effects of the legal diſpoſition, as fixed by ſtatute, might inſtantly follow; ſtill we ſhould have made but a ſlender progreſs in the invention of a deed, which ſhould poſſeſs the required power.

It might, indeed, be poſſible by ſuch a contrivance, to reduce, within a ſingle ſentence, bearing reference to a certain received form, or preciſe act of the legiſlature, all thoſe clauſes of a deed which are intended to carry the intentions into effect; but would this expreſs the will of the parties? By no means. Still it would be neceſſary to expreſs all the conditions and proviſions, which the caprice of parties, or the peculiarities of a tranſaction might require; in one word, all the delicate and nicer parts of the Science would remain unprovided for.

Were we even to go further, and to conceive a more perfect ſtate of the law, in which all the known contracts ſhould be preciſely defined, and all the rights ariſing out of them, in any given tranſaction, expreſſed and digeſted into order; nay, were we even to ſuppoſe that all the rights which can be given, and all the obligations which might be entered into, had a preciſe form of expreſſion provided for them; the Science, though it would, no doubt, be reduced to greater

certainty, would ſtill neceſſarily be involved in a technical language which would require to be ſtudied; which would need to be connected with the tranſactions of buſineſs by one to whom it was familiar.

It has been the misfortune of our day, to ſee the moſt venerable inſtitutions of mankind deſpiſed for a ſimplicity which ſeems unattainable in human affairs; and in this meaner department, it would appear that extreme ſimplicity is as little to be expected as in things of greater conſequence. No regulation which could be of uſe to the community at large, can reach further than to ſubſtitute a general for a particular form of giving effect to the intentions of parties; and the invention of formulæ for the expreſſion of that intention, would create a Science requiring ſtrict attention and ſtudy, and liable almoſt as much as our preſent ſyſtem is, to errors, and miſtakes, and litigation.

But the true point of perfection, of which Conveyancing is capable, ſeems to be the attainment of clear and preciſe forms, and well ſettled terms, by which the intention of parties may be expreſſed; and this is the very point to which, in its natural progreſs, the Science tends. Every new point, fixed by the deciſions of the Court, aſſiſts in laying the foundation of theſe general rules, which are always more ſafely and more certainly fixed by the exhibition of real caſes, and the reſult of actual practice, than by any theoretical plan that the wit of man can deviſe.

The problem then, to a certain extent, may be moſt completely and moſt eaſily ſolved; but, beyond that point, we are to look for an anſwer only in the gradual improvement of our Science. I have indulged in theſe obſervations, becauſe a queſtion of this kind may excite the attention of the ſtudent more forcibly than a queſtion of mere buſineſs would have done, and becauſe it ſerves to mark ſtrongly a diſtinction upon which I have ſettled much of the arrangement that I have followed.

There is, however, another uſe which may be made of this view of our ſubject. As the conſtituent clauſes of our deeds

are ſo uniform, I have conceived the plan of giving a ſimple view of the greater part of our body of Conveyancing in a few pages: This I have endeavoured to execute in an appendix. It will, I truſt, facilitate the knowledge of forms to the mere ſtudent, and prove to him how light a taſk the mechanical part of the Science forms, while at the ſame time it will afford to the experienced Conveyancer all that he can at any time require in a ſtyle-book.

2. The diſtinction betwixt clauſes expreſſive of intention, and clauſes meant to carry that intention into effect, will at once be acknowledged; but there is here another peculiarity worthy of our attention. All the clauſes by which the object of the deed is to be carried into effect are, in heritable deeds, the ſame, however the nature of the conveyance may vary; while, in perſonal deeds, the clauſes are alſo perfectly appropriated.

A title in lands is conferred by ſaſine: and whether the right be given to a purchaſer for a price, or from mere favour, whether it be given abſolutely to a ſtranger without any controul, or to the heirs of the granter under conditions and limitations, the very ſame forms are uſed. A ſuperior and vaſſal muſt be conſtituted, and a procuratory of reſignation, or precept of ſaſine is required; nay, even the heritable ſecurity for debt is conſtituted in the ſame way.

Hence, our firſt diſtinction is neceſſarily into heritable and moveable rights: but theſe great diviſions include under them many forms of deeds, and our next queſtion is, in what manner ſhall theſe be arranged? In conſidering this queſtion, there are two circumſtances which muſt be kept in view: 1. We ought never to depart from the order of practice; and 2. We ſhould make our arrangement ſuch, that the ſtudent may paſs from the conſideration of the more ſimple to that of the more complex forms. If the arrangement ſhall unite theſe two objects, we may be aſſured that it is good, ſince it muſt be capable of preſenting to the ſtudent all the principles of the Science in the moſt uſeful and moſt intelligible ſhape.

Yet, clear as this principle may ſeem, and unambigous as it ought to be in its application, it has produced very different arrangements. It was this principle which led Mr Roſs to conſider the perſonal bond, the aſſignation and diſcharge of it, and the diligence by which it could be rendered effectual, as the proper order and arrangement of his ſubjects; whereas, I muſt confeſs, that the charter which is the original of our land rights, and the diſpoſition which is the firſt of our derivative deeds, while they contain in them all the conſtituent parts of every other right affecting land, and are alſo the deeds from which every other heritable right muſt ſpring, appear to me the forms from which we ſhall beſt proceed in a regular gradation from the ſimpler to the more intricate.

It is in theſe deeds that we find all the clauſes of heritable rights in the plaineſt ſhape: and proceeding from theſe to the heritable ſecurity, the entail, and the marriage ſettlement, we find ourſelves progreſſively advancing to forms which become more and more intricate, from the various objects they embrace, and from the different and contingent intereſts they are meant to regulate. In following this order too, we have the advantage of following that of practice, and of proſecuting our ſtudies in the very ſhape, and under all the circumſtances which naturally occur in real buſineſs.

I ſhall, therefore, take the charter and ſaſine, by which the original feudal inveſtiture is conſtituted, as the point from which I proceed to explain the nature of deeds and the whole practice of Conveyancing; for, having ſhown in what manner the feudal right is originally conſtituted, what is more natural, than to explain thoſe deeds by which the eſtate is conveyed to a purchaſer, under all the variety of forms ariſing from the ſituation of the parties, and the nature of the ſubjects. The right to an eſtate being eſtabliſhed in a purchaſer, it ſeems to be a very obvious order to proceed next to explain thoſe forms by which burdens are created on the eſtate, whether ariſing from the conſtitution of ſervitudes, from ſecurities for debts, or from leaſes.

There remains, after theſe points are conſidered, a view of thoſe deeds in which the proprietor tranſmits his property to an heir; and this includes not only common ſettlements, but marriage ſettlements and entails, with family proviſions, latter wills, and all that variety of deeds which are often neceſſary in ſettling a perſon's affairs.

Theſe ſubjects prepare the way for a full inveſtigation of the forms by which the title of the heir is completed; and under theſe heads are included a great and intereſting part of conveyancing. It is this which forms the firſt part of the courſe: and it is completely detached from that part which remains.

The ſecond part of the courſe includes a no leſs important and uſeful claſs of forms. The firſt branch of it comprehends perſonal obligation; and if we conſider this as entering into almoſt every tranſaction, and take, alongſt with it, the forms by which obligations are tranſmitted, or diſcharged, it will aſſume that importance in our ſtudies to which it is juſtly entitled. There are naturally arranged, under this head, ſome other forms, which are neceſſary for completing our view of moveable deeds.

The ſecond branch will explain the nature of actions; and this would be the proper place for the forms of proceedings in Court, were I not reſolved to give all that relates to this laſt ſubject in the volume of the ſtyle-book, which treats of Summonſes. With actions is connected the ſubmiſſion and decree-arbitral; and, having thus ſeen in what way the ſentence of the judge is obtained, we naturally proceed to the diligence of the law, real and perſonal, by which that ſentence is enforced.

Under this arrangement, one deed will be found to riſe out of another, and tranſaction to follow tranſaction, in the natural and regular order of practice. There is not one deed in the whole circle that does not depend on ſome preceding one; nor does the granter in any caſe exerciſe a power which has not been conferred on him by a previous deed. Joined to this advantage, the arrangement I have choſen affords reſting places from which we may look back on a whole claſs of deeds, re-

view their progreſs, weigh their value and effect, and ſelect thoſe objects which it is neceſſary to keep in view in every tranſaction into which theſe deeds enter. In one word, it is here we complete our circle, and diſcover the dependence of one part on another; perceive by what forms our rights are conſtituted, tranſmitted, extinguiſhed; or, when it becomes neceſſary, in what manner they are declared by the ſentence of a judge, and enforced by the diligence of the law. And thus we have properly before us the great objects and full effect of Conveyancing.

III. Having explained the general principles and courſe of the arrangement. I ſhall ſay a few words reſpecting the method of ſtudy, and of teaching.

1. Conveyancing, in its juſt and proper meaning, comprehends much information; and, when we ſhall have duly conſidered the extent and importance of our ſubject, it will appear to be truly worthy of moſt ſerious attention.

At firſt, the ſtudent might be apt to conclude, that conveyancing conſiſted merely in a knowledge of forms, and that little more were required than what is to be learned from a ſtyle book: But he will ſoon perceive that theſe collections are the materials only of our ſcience, and that the uſe to which they are to be applied is a ſtudy of ſuch a nature as to call for all his attention.

But a knowledge, even of forms, is not to be reckoned below our notice; ſince, in many caſes, words of ſtyle become the very eſſence of the deed, and are not to be departed from without undoing the intention of the parties. Indeed, in every tranſaction, the rights of the parties depend ſo much on the forms of the deeds which are executed, that thoſe only who are unacquainted with the ſubject, can think the forms of deeds a matter of indifference. In all events, to the ſtudent in our profeſſion, this part of his ſtudies never can be neglected with impunity; ſince an examination on the forms of deeds makes part of his public trials; and his acquaintance

with ſtyles has been made the criterion of his attention to his ſtudies, and of his knowledge in his profeſſion.

No ſooner have the forms of deeds become familiar to the ſtudent, than he perceives the importance of a knowledge of the technical and appropriated language of conveyancing. I call that language appropriated which has received the the ſanction of cuſtom, and on which a meaning has been ſtamped by the deciſions of the Court; a language which a man of buſineſs would ill exchange for the moſt elegant turn of expreſſion. Without ſuch knowledge, how ſhall he deſtine an eſtate through a long courſe of ſucceſſion, where the uſe of any other than techical language, if it does not overturn the intention of the granter, may at leaſt create doubts, and give birth to law pleas; or how, without this knowledge, ſhall he regulate the intereſts of parents and children in the marriage ſettlement. In ſhort, there is not a deed in which a knowledge of this language is not required.

Beyond this, there is ſtill another ſtage; in which the law of every tranſaction has been ſtudied, every queſtion that may ariſe out of an agreement conſidered, and the principle well underſtood on which the rights of parties are to be fixed. The knowledge which depends on the collecting and arranging of this information, marks the intelligent conveyancer; and it is the acquiring of this knowledge which can alone entitle a man to be at the head of his profeſſion.

In giving this view of your ſtudies, I preſent an object that ought to intereſt you: one in which you may gradually advance from that point where the memory is chiefly concerned, to one that will admit of the full exereiſe of your judgement. This is not the ſtudy of a day, but it is one in which you may feel and enjoy the conſciouſneſs of your progreſs; where induſtry will inſure ſucceſs, and where, at the ſame time, the greateſt powers will find full employment.

We are not without other conſiderations, of ſufficient weight to intereſt us, and to induce us ſeriouſly to conſider the nature of the duty we impoſe upon ourſelves, when we undertake the

office of a conveyancer. If we look into the decisions of the Court, we find evidence in every page of the importance of our profession. We read there this melancholy truth, that, of the many questions which are on record, and which have suspended the exertions and ruined the hopes of thousands, few indeed have arisen that might not have been prevented by a proper knowledge of conveyancing.

It is, no doubt, true, that every error which a man of business may commit will not render him personally liable for the loss which his client may sustain; but, to a man possessed of a proper way of thinking, the alleviation arising from this will not yield him much satisfaction. Besides, it is not possible that an error can have occasioned a loss, without at least affecting the employment of the person by whom it has been committed. Whether, therefore, we consider the importance of our profession to the public, or view it merely as it regards ourselves, we undertake a very serious duty when we prepare ourselves to exercise it.

2. But I must further observe, that it is one great object of this course to complete the education of the writing chamber; to supply those prelections and examinations * which have

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* Examinations have appeared of importance to the Society; and, from the application which they ensure, and the close attendance which they enforce, certainly are of very great service to the student. It is from a conviction of this, as well as to meet the views of the Society, that I have set apart one day of the week for examining the students on the subjects of the lectures of the preceding week. I have made it hitherto a matter of choice; and those only attend, on the day of examination, who chuse to submit to these examinations; yet so thoroughly satisfied am I of the advantage arising from it, that I must earnestly press it upon every student as an indispensible duty.

I know that many who would willingly submit to the labour of preparing for an examination, are held back by an apprehension that they risk their future character, and that an unfortunate

been conſidered as duties incumbent on the individual: but which muſt ever be found (for teaching is itſelf a ſcience) incompatible with the duties of practice.

It certainly happens that the apprentice does not always make uſe of thoſe opportunities which a writing chamber affords. It often happens, too, that he takes little intereſt in what he ſees going on around him. The man of buſineſs has it not in his power to explain every tranſaction to his apprentice, or the reaſon of the different ſteps he finds it neceſſary to take: he directs certain things to be done, and they are done with little or no intereſt, and without any regard to the reaſon of the thing, or to the effects which they are to produce. The apprentice does not, in general, feel it incumbent on him to conſider theſe matters; he relies implicitly on the directions he receives, and ſeldom thinks of aſking himſelf, How would I have conducted this buſineſs, had I been left to act for myſelf? Yet, if it were poſſible for him to ſuppoſe himſelf placed in the reſponſible ſituation of the perſon entruſted with the buſineſs, the writing chamber, in place of a dull laborious taſk, would afford a ſcene of a very different kind; the benefit which would reſult from the intereſt thus excited in the apprentice, would very quickly be felt, and he could

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omiſſion may render their real acquirements ſuſpected. This, I think, can hardly be the caſe: Every perſon knows, that mere memory will give ſuch a facility and readineſs in the performance of ſuch a taſk, as will leave a perſon of leſs retentive memory, though of greater knowledge, apparently behind. But no perſon is deceived by this. It produces no effect. On the other hand, when it is recollected that the ſubject of any one examination is only the ſubject of four lectures, ſurely no great load to the memory, and which may be prepared for by a ſmall degree of additional labour; while the regular attention which it thus enforces, and the eaſe in paſſing other more formal examinations which it enſures, is an inducement that will, I truſt, render the meaſure general.

not fail to make rapid advances in the knowledge of his profeſſion.

If, in the courſe of my lectures, I could enforce this truth, and teach the apprentice to make the proper uſe of the opportunities of acquiring knowledge which the writing chamber affords; could I induce him to have recourſe to his own powers, in place of truſting implicitly to thoſe of others, I ſhould then have fulfilled, in a great degree, the objects of the inſtitution.

3. The mere attendance on lectures is, by no means, ſufficient. Lectures may be of ſervice in preſenting to the ſtudent general and comprehenſive views of his ſubject. They may abridge labour, by referring at once to the authorities that bear on any one point, and directing the ſtudent to thoſe authors which it is neceſſary for him to conſult. But, in our ſcience, where ſo little is to be found in authors in the ſhape that is adapted to the uſe of the ſtudent in conveyancing, it becomes neceſſary, not only to arrange our information in the order that may be uſeful to him, but to draw from that ſource the rules of practice which are to carry him through the different tranſactions of buſineſs.

Now, it is natural for the ſtudent to imagine, that while he buſies himſelf in putting down authorities, and in collecting rules of practice, he is uſefully employed; yet nothing is more certain, than that he may be employed in this way for years without making much progreſs in knowledge. To render rules of practice uſeful, we muſt have formed them for ourſelves; they muſt be the reſult of our own inveſtigation. I do not, by this, mean that the ſtudent ought not to take notes of the lectures: On the contrary, I think it is neceſſary he ſhould take them; but he is not to reſt ſatisfied with this; he ought to conſult the authorities referred to; to draw from theſe authorities his own concluſions, and to compare them with the practical rules that may have been laid down. It is in this way that notes and rules will have a ſenſe and mean-

ing, which, as mere notes of a lecture, they never can poſſeſs. In one word, it is my object to perſuade every man who engages in this ſtudy to uſe his own powers, and to truſt to them alone.

I have repreſented this courſe as principally intended to complete the education of the writing chamber; yet no man acquainted with the ſubject will fail to perceive the advantages which may be derived from it, by the lawyer, in the firſt years of his practice: nor would it be difficult to connect with it a plan of ſtudy, which would give to the ſtudent in that profeſſion a full knowledge of deeds and of practice.

OUTLINES

OF A

COURSE OF LECTURES

ON

CONVEYANCING.

FIRST PART OF THE COURSE.

LECTURE I.

INTRODUCTORY remarks and explanation of the plan, on which the charter and ſaſine, the diſpoſition to a purchaſer, and the deeds neceſſary for completing the title of the purchaſer, are to be treated of. Of the nature of antient deeds by which a property in land was conſtituted, and the effect of the feudal laws on theſe forms.—The hiſtory of the feudal inveſtiture in this country.—The diſtinctions in regard of charters as ariſing, 1ſt from the manner of holding; 2d, from their being original, or by progreſs.—The ſtate of landed property in this country, as it affects the giving out of original charters, and an explanation of thoſe circumſtances under which an original charter can at preſent be granted.

LECTURE II.

OF THE ORIGINAL CHARTER.

1. NARRATIVE—deſignation of the parties—cauſe of granting. 2. DISPOSITIVE CLAUSE—terms of conveyance—deſcription of the diſponee—deſcription of the lands.

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LECTURE III.

CHARTER Continued.

Notes Page 13.

THE TENENDAS, expletive parts of the clause—REDDENDO, relief payable by a singular successor—clause of WARRANDICE—ASSIGNATIONS to rents and warrandice—clause of REGISTRATION—TESTING CLAUSE, PRECEPT, and INSTRUMENT OF SASINE—form of the clause—effect of the act 1693—forms of the clause.

By 1672. Cahors. & Procr. are inserted in one Deed—

I. EXAMINATION.

In preparing for this examination, it will be necessary to peruse the third title of the second book of Mr Erskine's Institutes of the Law—questions will be put on the 5, 14, *and intervening sections of that title.*

The student will also prepare for an examination on the whole of tit. 4. *and on sections* 13, 14, 15, 17, 19, 21, 22, *and* 37. *of tit.* 5.

The titles and sections I refer to, are those of the abridged copy of the Institutes.

Besides these subjects, the student will be prepared to answer such questions as naturally arise out of the three preceding lectures, and besides having recourse to the authorities there referred to, he will peruse what relates to the feu-contract and charter, in the First Volume of the System of Styles, and the clauses of the charter as described and enumerated in the concentrated View of Conveyancing hereto subjoined.

LECTURE IV.

INSTRUMENT OF SASINE.

THE ACT of poſſeſſion gives form to the inſtrument—terms of the INSTRUMENT—invocation—the date—the appearance of the parties—the narrative of the warrant—the requiſition to the bailie to execute his office—the acceptance by the bailie and his application to the notary—the delivery of ſaſine—the requiring of inſtruments—the place—the calling of the witneſſes, which cloſes the form of the inſtrument—the DOCQUET of the notary—the SUBSCRIPTION of the witneſſes—the change produced on the inſtrument by the nature of the warrant.

Notes Page 21.

LECTURE V.

INSTRUMENT OF SASINE Continued.

CHANGES on the INSTRUMENT of SASINE proceeding from the nature of the warrant continued—how far a ſaſine may be general—in the name of the lands—in the name of the receiver—ſaſine in favour of an heir—ſaſine where the lands are diſcontiguous—where they are contiguous but are derived from different ſuperiors—where held by different titles from the ſame ſuperior—or requiring different ſymbols—ſaſine *propriis manibus*.

LECTURE VI.

INSTRUMENT OF SASINE Continued.

REGISTRATION—history of the records—the formation of our present record—MINUTE BOOK—regularity required from the keepers—in what registration consists—effect of an unrecorded sasine—method of renewing a sasine—of supplying the defect when the registration has not been signed by the keeper.

LECTURE VII.

FEU CHARTER.

CONDITIONS to be met with in the charter—astrictions to the superior's mill—power of poinding for the feu-duty—irritancy *ob non solutum canonem*—division of the feu-duty—reservations in favour of the superior—of mines—power of multiplying superiors—restrictions on the vassal—power of preemption—prohibition to sub-feu—means for securing the conditions come under by the vassal.

II. EXAMINATION.

On the INSTRUMENT of SASINE and CONDITIONS in the CHARTER.

Nov. 24th *In preparing for this examination, the student will peruse sections* 15, 16, 17, 18, 19, 20, 21, *and* 22. *of the* 3*d title of Erskine, B.* ii., *and the* 6*th section*

of the 2d title of the 3d book. He will peruſe pages 91. and 111. inclusive, of the Firſt Volume of the Syſtem of Styles, on the Inſtrument of Saſine, and pages 77. and 83., for the conditions of the charter. He will attend alſo to the authorities and caſes referred to in the lectures.

LECTURE VIII.

Feu Charter Continued.

Nov. 5 Restrictions on the vaſſal continued—danger of aſſigning reaſons for a reſtriction—proviſions relative to the entry of heirs—plans for ſecuring the immediate entry of the vaſſal—the effect of an entail on the entry—renunciation of the caſualities—practical concluſions—obſervations relative to the feu-contract—uſe of that deed—feu-contract for building—how far adjudging creditors would be affected by the conditions of this deed—practical rule to be deduced from this—the effect of the prohibition to ſub-feu—how it may be rendered effectual—feu-contract for coal—for erecting machinery.

LECTURE IX.

Disposition to a Purchaser.

History of this deed—the origin of the indefinite precept explained, and its importance in modern conveyancing pointed out.

LECTURE X.

Disposition to a Purchaser Continued.

28th Nov.

A comparison betwixt the form of the charter and of the diſpoſition—narrative of the diſpoſition—dispositive clauſe—deſcription of the diſponee—practical rules—obligation to infeft a purchaſer—effect of this clauſe—terms of it—procuratory of resignation—form of the act of reſignation—parts of the clauſe—clauſe of warrandice—of exceptions—assignation to the rents and title deeds—obſervation on the precept of ſaſine of the diſpoſition.

LECTURE XI.

Completing the Title of the Purchaser.

The act of the ſuperior neceſſary—effect of his right in the eſtate of the vaſſal—on the forms by which the purchaſer's title may be completed—resignation—the neceſſity of the act of reſignation terms of the charter of resignation—deſcription of the vaſſal in the diſpoſitive clauſe—the effect of this deſcription on the entry of ſubſequent purchaſers—quæquidem—obſervations on the means of forcing an entry by reſignation, under the act 20th Geo. II. c. 50.—charter of confirmation—hiſtory of this charter—obſervations on the nature of the title—clauses of which the charter conſiſts—changes on theſe charters.

III. EXAMINATION.

THE SUBJECTS *of* EXAMINATION *are the* CONDITIONS *of the* FEU-RIGHT—*The* CLAUSES *of the* DISPOSITION *to a purchaſer—The forms of the* CHARTERS *of* RESIGNATION *and* CONFIRMATION.

In preparing for this examination, it will be proper to attend to the conditions of the Right, Volume Firſt of the Style book, pages 76. *and* 87. *incluſive. For the hiſtory of the diſpoſition, in addition to the notes of the lectures, ſee pages* 112. *and* 116. *incluſive, of the Style-book. The connecting paragraphs of the purchaſer's title may be read, and more particularly "Remarks on the effect of the Saſine," p.* 193. *and* 198.

Read alſo Mr Erſkine's title "of the Tranſmiſſion of Rights by confirmation and reſignation."

LECTURE XII.

COMPLETING the TITLE of the PURCHASER Continued.

CROWN CHARTER—remarks explanatory of the nature of this title—the power of the barons in paſſing the charter—the nature and effect of the ſignature—how far an error, ariſing in the precept following on it, may be rectified—practical inference from this—can there be any addition made to the ſignature after being paſſed by the barons—peculiarities in the diſpoſition by a VASSAL to his SUPERIOR—in the diſpoſitive clauſe—in the

clauſe of warrandice—in the precept of ſaſine—peculiarities in the diſpoſition by a SUPERIOR to his VASSAL—the right of the vaſſal is wrought off by a a reſignation, and not by a renunciation—the effect of the deſtinations in caſe of conſolidation—reſignation *ad remanentiam propriis manibus.*

LECTURE XIII.

COMPLETING the TITLE of the PURCHASER Continued.

CONSOLIDATION.—The method of conſolidating the property and ſuperiority deduced from the older opinions, and the points which have been fixed as rules of practice in the late deciſions of the Court.

LECTURE XIV.

COMPLETING the TITLE of the PURCHASER Continued.

CASES explanatory of the method of COMPLETING the TITLE—where the ſeller has been infeft—where he has not been infeft, but has right to an unexecuted precept—the caſe where the ſeller was neither infeft nor had right to procuratory or precept—the caſe of a ſale by the vaſſal to his ſuperior—by the ſuperior to his vaſſal—the cauſes explained from which a difficulty in the completing of the purchaſer's title ariſes—RULES by which the preference of the purchaſer's title, in competition with other rights, will be judged of.

LECTURE XV.

COMPLETING the TITLE of the PURCHASER Continued.

DANGERS to which the title of the purchaſer is expoſed—dangers againſt which the records yield no defence—dangers againſt which they yield but an imperfect defence—remarks on ſome matters relative to the ſale—ARTICES of ROUP—condition in caſe the higheſt offerer ſhall fail to find caution—what right it gives to the next higheſt offerer—what claim of damage againſt the firſt—ARTICLES relative to the progreſs of writs—practical rules on this point.

IV. EXAMINATION.

SUBJECT OF THE EXAMINATION.

The Form of the SIGNATURE, *and the Method of carrying the Charter through the Seals.—The* DISPOSITION *by a Superior to his Vaſſal, and by a Vaſſal to his Superior.*—CONSOLIDATION.—*The Rules by which the Title of the Purchaſer is completed, and the Dangers to which his Title is ſubjected,*

In preparing for this examination, I muſt recommend to the ſtudent a ſecond peruſal of the 7th title of the 2d book of the Inſtitutes. The three laſt ſections of the 5th title of that book will explain the nature of the ſeals through which the Crown Charter paſſes; and, in the Style book, there is a full account of this

part of the form. These, with the authorities to which I refer in the Lectures, will sufficiently prepare the ſtudent for this examination.

LECTURE XVI.

COMPLETING the PURCHASER'S TITLE continued.

ARTICLES of ROUP continued—difference betwixt a ſlump bargain, and ſale by a rental—practical rules on the ſubject—fraudulent devices on the part of the Expoſer—on the part of the Bidders—the power of a common agent to purchaſe—of a factor—where the price is left to be fixed by arbiters—the nature of a conditional ſale—the effect of a leaſe againſt a purchaſer; and the extent of the tenant's claim for obligations come under by the ſeller.

LECTURE XVII.

BURDENS affecting PROPERTY. SERVITUDES.

MANNER of conſtituting a POSITIVE SERVITUDE—a known and received NEGATIVE SERVITUDE—a negative ſervitude not recogniſed in law—THIRLAGE rules, and inferences from the new law—PASTURAGE—ſervitude of a ROAD—of an AQUEDUCT—clauſe of regiſtration of the right of ſervitude—NEGATIVE SERVITUDE—DISCHARGE of ſervitudes.

LECTURE XVIII.

BURDENS affecting PROPERTY continued.

HERITABLE SECURITIES for DEBT—view of securities for money—to what purposes they may be applied—regulations of the acts 1621 and 1696 to prevent their misapplication—objects which ought to be in view of the agents for the borrower and lender.

LECTURE XIX.

BURDENS affecting LAND continued.

HERITABLE SECURITY for DEBT continued—history of the forms of our securities for debt, introductory to the form of modern securities—observations on the wadset, and the form of its discharge—heritable bond—narrative—effect of the act 1696 on this clause.

V. EXAMINATION.

SUBJECTS OF EXAMINATION.

ARTICLES of ROUP. SERVITUDES. OBSTACLES to a LOAN. FORM of the HERITABLE BOND.

In preparing for this examination, the student will peruse the 9th title of the 2d book of the Institutes,

16th Dec.

down to the 22d ſection, incluſive. He will alſo peruſe § 12. 13. 14. 15. 16. 17. *of the firſt title of B.* IV.; *and he will conſider what is ſtated in the Style Book on the ſubjects of this examination, as well as the authorities to which, in the Lectures, he will be referred.*

LECTURE XX.

HERITABLE SECURITIES for DEBT continued.

Form of the HERITABLE BOND—obligation to infeft—penalties in the bond—procuratory of reſignation—WARRANDICE—ASSIGNATION to writs and rents—clauſe enabling the debtor to enter into poſſeſſion—factory—OBLIGATION to account for intromiſſions—to the debtor—to a creditor—OBLIGATION to enter the creditor, and aſſign nonentry duties—Clauſe of REGISTRATION.

LECTURE XXI.

HERITABLE SECURITIES for DEBT continued.

PRECEPT of SASINE—peculiarities which diſtinguiſh this from the precept in the diſpoſition to a purchaſer—clauſe of REDEMPTION—ſubjects over which an heritable ſecurity may be given—feu-duties—the intereſt of a kindly tenant—debts ranked on an eſtate—changes on the form of the deed—BOND of CORROBORATION.

LECTURE XXII.

HERITABLE SECURITIES for DEBT continued.

BOND of RELIEF—BOND for a CASH ACCOUNT—DISPOSITION in SECURITY.

LECTURE XXIII.

HERITABLE SECURITIES for DEBT.

VIEW of the nature of the HERITABLE SECURITIES—as it affects the powers of the granter—the right acquired by the creditor—the effect of a partial discharge on the extent of the security—how far the security may be revived by destroying the discharge—effect upon the right by intromissions under of a posterior creditor—DISPOSITION and BACK BOND—the bond—effect of the creditors consent in favour personal right to land, how it may be used as a security for debt.

VI. EXAMINATION.

SUBJECT OF EXAMINATION. THE HERITABLE SECURITY.

In preparing for this examination, the student will peruse title 8. *of b.* ii., *and* § 3. *of title* 2. *of that book.*

He will alſo pay attention to what is ſtated in the Style Book on this ſubject; and, in particular, on the diſcharge of the wadſet. Theſe, with the authorities referred to, will be a ſufficient preparation.

LECTURE XXIV.

BURDENS on PROPERTY continued.

LEASE—how far this deed, when granted for an unuſual endurance, is good againſt purchaſers—in what caſes the queſtion can occur—form of the leaſe—what right muſt the ſeller poſſeſs—the effect produced on the right of the heritor by liferents—by heritable ſecurities for debt—by an entail—by diligence at the inſtance of creditors.

LECTURE XXV.

THE LEASE continued.

THE power of a proprietor with a perſonal right only, in regard to letting of leaſes—the power of tutors or curators—of factors—life-renters—the effect produced on the leaſe by one of two tenants drawing back after the leaſe had been executed by the other—the DISPOSITIVE CLAUSE—parts of which it conſiſts—deſcription of the tenant—the tenant's power of aſſigning or ſubſetting—deſtination of the leaſe—can a tenant appoint a factor or manager—deſcription of the ſubject—right given to the tenant.

LECTURE XXVI.

THE LEASE continued.

POWERS over the farm retained by the landlord—his right of acceſs to work mines—to hunt—the endurance of the leaſe—clauſe of WARRANDICE—obligations on the tenant—payment of rent—different forms of this clauſe—the conventional terms of payment—the conſequence of poſtponing or anticipating theſe terms—the effect produced on the ſucceſſion of the landlord—the effect produced on the ſucceſſion of the tenant—how far a ſecurity may be given by leaſe for payment of a debt due to the tenant—means of ſecuring the maſter in payment of his rents.

LECTURE XXVII.

THE LEASE continued.

The effect of uncommon ſterility on this contract—the effect of payments to the landlord previous to the term of payment—the effect of an irritancy, *ob non ſolutum canonem*—clauſe relative to the houſes and fences—how far the obligation on the tenant to uphold renders him liable for damage from any uncommon ſtorm—REGULATIONS relative to the management of the farm—ſtipulated damage, can it be modified—obligation to remove—when any thing required to be done on either ſide, in what form the applica-

tion ought to be made—how far the conditions of the leaſe are affected by any communing at the time of entering into the leaſe.

VII. EXAMINATION.

The SUBJECT of this EXAMINATION is the LEASE.

In preparing for this examination, it may be proper for the ſtudent, in addition to his notes of the Lectures, and what he will find on leaſes in the 2d vol. of the Style Book, to conſult ſections 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 26. 27. *and* 28. *of the 2d book of the Inſtitutes.*

LECTURE XXVIII.

THE LEASE continued.

Some REMARKS on the RENTAL RIGHT—ASSIGNATION to the leaſe—does the original tenant remain bound after the aſſignation—what neceſſary for completing the right of the aſſignee—the SUBLEASE—how far is the ſubtenant bound to the landlord—the REMOVING of tenants—obſervations on this ſubject—when the ſubject of the leaſe is a houſe in town—when the removing is againſt the heirs of a liferenter—or againſt the tenants of the liferenter—removing under the A. S. 1756—where the farm has not been properly ſtocked—objections to the title of the purſuer of a removing.

LECTURE XXIX.

Deeds of Succession.

Introductory observations explanatory of the nature of this claſs of deeds—diſtinction betwixt thoſe deeds by which heritable and thoſe by which moveable ſucceſſion is regulated—terms by which heirs are called in a deſtination—terms applicable to the heir at law—meaning of the terms heir-male—heir-female—conſiderations ariſing from the deſtination to the daughters of the granter, failing heirs-male in the deſtination—a deſtination may be generally or ſpecially expreſſed—compariſon of the two forms of deſtination—reaſon for cloſing the deſtination in favour of heirs whomſoever—meaning of the term—points to be kept in view in renewing the inveſtiture of an eſtate.

LECTURE XXX.

Deeds of Succession continued.

Destination to huſband and wife in conjunct fee and liferent—effect of it where the eſtate is the property of the huſband—where it belonged to the wife, preſumptions of law to be attended to in expreſſing this deſtination—destination to parents and children—to the father in liferent, and children *naſcituri* in fee—caſes on this point—concluſions—the effect of the expreſſion "in liferent allenarly"—deſtina-

tion to a father in liferent, and his ſon in fee, but without naming the ſon—where the fee is given to the ſon *nominatim*—rules of practice.

LECTURE XXXI.

Deeds of Succession continued.

Disposition to an heir—the diſtinguiſhing marks betwixt this deed and the diſpoſition to a purchaſer—clauſes counteracting the general nature of the deed—nature of a reſerved liferent—reſervation of a power to alter or revoke—effect of it when made on death-bed, where the diſponee is heir-at-law—where the diſponee is a ſtranger—points to be kept in view in conſidering this queſtion—authorities—the principle explained on which this queſtion turns.

VIII. EXAMINATION.

Subjects of Examination.

The Lease and the Disposition to an Heir.

In preparing for examination on what relates to the leaſe, the ſtudent, in addition to his notes, and to what he will find on that ſubject in the 2d volume of the Style Book, may read over § 13. 14. 20. 21. 22. 23. 25. *of tit.* vi. *b.* 2. *of the Inſtitutes.*

And for the remaining part of the ſubject, § 8, 9, 10, 11, 15, 16, 17, 20, 21, 22, 23, 24. *of tit. 8th of B.* iii., *may be conſulted, alongst with what he will find on the ſubject in the* 3*d Volume of the Style-book.*

LECTURE XXXII.

Deeds of Succession Continued.

Disposition to an heir—recapitulation, explanatory of the principle of the deciſion where a revocation is made on death-bed, and the diſponee a ſtranger—enquiry into the proper form of this clauſe—form in Coutts's caſe—an example of this clauſe—a compariſon of the effect of theſe two clauſes—caveat on this point—effect of the reſerved power to ſell or burden—clause diſpenſing with delivery—Summing up of the grounds of diſtinction betwixt the diſpoſition to an heir and to a purchaſer—burdens under which this deed is given—as, of the granter's debts—is he liable for the whole debts, or only to the extent of the ſucceſſion—has he recourſe againſt the executor—manner of expreſſing the clauſe when it is meant to render the debts of the granter a debt on the diſponee alone.

LECTURE XXXIII.

Deeds of Succession Continued.

Disposition to an heir—reſerved faculty to burden—where it is perſonal—manner of exerciſing

it—caſes on this point—Reſerved power to conſtitute a real burden—manner of exerciſing the right—of completing it—When a real burden is conſtituted from the firſt—requiſites—caſes on this point—concluſion and ſumming up of this ſubject—CONDITIONS for ſecuring the line of ſucceſſion—diſtinction betwixt the deed of entail under the ſtatute and the diſtination to heirs ſimple or qualified—effect of inhibition on the conditions of this laſt deed.

LECTURE XXXIV.

DEEDS of SUCCESSION Continued.

The nature of thoſe CONDITIONS with which a deſtination with prohibitory clauſes is burdened—their effect on the heir and the right which they give to the ſubſtitute—the character under which the ſubſtitute is entitled to relief—ESTIMATE of the means afforded by this deed for continuing the ſubſtitution—reaſon of the prohibition to ſell, &c in a deed which is not guarded againſt creditors or purchaſers—CONDITIONS impoſed on the heir, as—things he is prohibited from doing—method fallen upon to evade a prohibitory clauſe—CONDITIONS he is ordered to obſerve—to bear the name and arms—how far this clauſe, in a deſtination, differs from the ſame clauſe in an entail—poſſeſſing under the deed—effect of an irritant clauſe added to theſe conditions—can this irritancy be purged.

LECTURE XXXV.

DEEDS of SUCCESSION Continued.

The effect of a CLAUSE of RETURN—of a power of REDEMPTION given to a certain deſcription of heirs in the deſtination—recapitulation and practical rules.

IX. EXAMINATION.

THE SUBJECT of EXAMINATION.

The CONDITIONS *uſually annexed to a* DISPOSITION *to an* HEIR.

In preparing for this examination, the ſtudent may peruſe ſect. 9, 10, 11, 12, 13, 21, 22, 23. *of tit. 8th, B. 2d of the Inſtitute, but he muſt principally truſt to his notes of the lectures.*

LECTURE XXXVI.

THE TESTAMENT.

Nature of the TESTAMENT—of the CODICIL—terms of the teſtament—narrative—clauſe appointing an executor—nature of the office—form of conſtitution where the right of ſucceſſion is given to the executor—where there is a direct conveyance of the effects to the executor—BURDENS impoſed on the executor—effect of a ſhortcoming—when it ariſes from a deficiency in the funds—from loſs ſuſ-

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tained by the funds—PRACTICAL RULES ariſing from theſe conſiderations—the manner of expreſſing legacies—general legacy to a legatee—to a legatee and his heirs—to a legatee whom failing, &c.—origin of SUBSTITUTIONS in our law—the civil law rules on this point—the opinions of our writers.

LECTURE XXXVII.

TESTAMENTS Continued.

SUBSTITUTIONS continued—caſes on this point—the manner of expreſſing a ſubſtitution in a legacy as pointed out by theſe authorities—CASES pointing out the errors that have been committed in the manner of expreſſing teſtaments, with obſervations—a joint legacy producing a right of accreſcence—the principle of this right—rule of practice—legacy to one in liferent and another in fee—CONDITIONS under which legacies are given—CASES—CONCLUSIONS.

LECTURE XXXVIII.

TESTAMENTS Continued.

SPECIAL legacy—nature of this legacy—effect of diſcharging the debt—of taking an heritable ſecurity—bequeſt of an heritable ſubject—whether the appointing a ſubject out of which a legacy is to be paid be taxative or demonſtrative—PRACTICAL RULES in regard to ſpecial legacies—ſtrict forms overlook-

ed to give effect to the will of the deceaſed—the meaning of the term Relations in a Teſtament—the meaning of other terms occurring in this deed—the effect of a revocation in a teſtament on the ſettlement of a landed eſtate—irregularities in the execution which have been overlooked—NOTORIAL SUBSCRIPTION of teſtaments—obſervations tending to ſhow the general nature of the teſtament and the rights conferred by it—the effect of the act 1690 on this deed.

LECTURE XXXIX.

TESTAMENTS Continued.

THE TITLE of the executor—the form of the CONFIRMATION—the effect of the confirmation—ought the confirmation of an executor dative *qua* neareſt of kin to ſtop in the event of a competition for the office—it is neceſſary to bring evidence of the death of the teſtator—muſt the executor condeſcend on the preciſe time of the death—muſt the inventory offered to the commiſſary be complete—the nature of the cautioner's obligation—form of the confirmation of an executor nominate—the effect produced by confirmation.

X. EXAMINATION.

SUBJECT of EXAMINATION—TESTAMENTS.

In preparing for this examination, the ſtudent, in addition to what he will find in the Style-book on the

ſubjects treated of in the laſt four lectures, will take the trouble of peruſing tit. 9th of B. iii. *of the Inſtitutes.*

LECTURE XL.

TESTAMENT Continued.

THE PRINCIPLE explained on which the partial confirmation of the neareſt in kin carries the whole eſtate to his own heirs—the principle on which poſſeſſion, without confirmation, makes the property reſt—other caſes depending on the ſame principle—ſumming up of this ſubject—CASES illuſtrating the method of completing titles to a moveable ſubject.

LECTURE XLI.

TESTAMENT Continued.

CIRCUMSTANCES which ought to be in the view of the man of buſineſs in framing a teſtament—DISABILITIES ariſing from defect of underſtanding—from minority—from the nature of the eſtate—right of wife and children—CASES ſhowing the devices for evading this rule—BY naming a ſubſtitute to the child's right of ligitim—BY a BILL—to the legatee—to the legatee through a third party—BY indorſation—BY delivery of money—BY converting his moveables into heritage—BY lending out his money, and taking the bond to himſelf and his

heirs, excluding executors—the wife's right to the GOODS in COMMUNION—the line of CONDUCT proper to be followed by the man of buſineſs, when he is called on to execute a SETTLEMENT—rules on this laſt head.

LECTURE XLII.

GENERAL DISPOSITION.

DISTINCTION betwixt the form of conveying heritage and moveables—meaning of the term, General Diſpoſition—FORM of the DEED—effect of a donation *mortis cauſa*—form of deſtination by which this effect is avoided—DISPOSITIVE CLAUSE—forms of this clauſe—danger of introducing the technical terms of the Engliſh law—caſes explanatory of the terms, Goods and Gear—PRACTICAL RULES from theſe caſes—meaning of other terms in this deed—OBLIGATION to INFEFT—a power to purſue and to diſcharge—appointment of an executor—effect of a general BURDEN of DEBTS—of ſpecial burdens.

LECTURE XLIII.

MARRIAGE CONTRACTS.

THE EFFECT of the legal proviſions, and the powers of the parties over them—TIERCE—PROVISIONS to huſband and wife—to children—GENERAL OBSERVATIONS on the form of the marriage contract—

points relative to the ſettlement of an eſtate—DESTINATION in the MARRIAGE CONTRACT—effect of tierce—heirs whomſoever, in the cloſe of this deſtination.

XI. EXAMINATION.

SUBJECT OF THE EXAMINATION.

CONFIRMATION *and* COMPLETING *the* TITLE *of the* NEAREST *of* KIN—*the* POWERS *of a* PROPRIETOR *to* TEST—GENERAL DISPOSITION—POWERS *of the* MARRIED PARTIES *over the* LEGAL PROVISIONS *to* HUSBAND, WIFE, *and* CHILDREN.

This examination contains a greater number of ſubjects than uſual; and it is principally from his notes of the Lectures that the ſtudent muſt prepare himſelf for this examination. He may alſo conſult § 11. 12. 13. 14. 15. 16. 17. *of tit.* 9. *b.* iii., *and* § 3. 4. 5. 6. 7. 8. *of the ſame title; and the* 6*th tit. of b.* i. *thoſe parts which relate to the legal proviſions of Huſband and Wife.*

LECTURE XLIV.

MARRIAGE CONTRACTS continued.

CAN the huſband ENTAIL the ESTATE provided to his children by the marriage contract—can he ALTER the ORDER of SUCCESSION—Is the eſtate LIABLE for the DEBTS and DEEDS of the huſband—effect of theſe on the ſettlement—where the DESTINATION is

to BAIRNS of a MARRIAGE, its effects in the different ſituations in which it may occur.

LECTURE XLV.

MARRIAGE CONTRACTS continued.

PROVISIONS to younger children—where they conſtitute a right of CREDIT in the child—where they conſtitute a right of SUCCESSION only—the POWER of the father over the ESTATE in queſtions with the younger children—in regard to the children of a ſecond marriage—PROVISIONS in favour of the WIFE—CLAUSES for carrying the contract into effect.

LECTURE XLVI.

MARRIAGE CONTRACTS continued.

PROVISIONS to CHILDREN—how far they can compete with creditors—how far they are to be conſidered as in part of the legal proviſions—or of the conventional proviſions under the contract—CONDITIONAL PROVISION to CHILDREN—nature of the conditions that may be annexed to theſe proviſions—DEEDS intended to DEFEAT the rights of the wife or children.

LECTURE XLVII.

ENTAILS.

HISTORY of the ENTAIL—NATURE of the ACT—re-

quiſites of the act—outward FORM of the ENTAIL—muſt be recorded—in the regiſter of tailzies—in the regiſter of ſaſines.

XII. EXAMINATION.

SUBJECT OF EXAMINATION.

MARRIAGE CONTRACTS—ENTAILS *in their hiſtory, and the* OUTWARD FORM *of the* DEED.

In preparing for this examination, the ſtudent, in addition to the notes of the Lectures, will conſult Erſkine in the Titles on the ſucceſſion in heritage and moveables, where the above points are treated of.

LECTURE XLVIII.

ENTAILS continued.

THE REGISTRATION of the ENTAIL continued—nature of the DEED of ENTAIL—NARRATIVE—DISPOSITIVE CLAUSE—deſcription of the inſtitute—ſituation of the diſponee in whom the nomination terminates.

LECTURE XLIX.

ENTAILS continued.

PROCURATORY of RESIGNATION—CONDITIONS of the ENTAIL—thoſe which relate to the things that the heir is ordered to do—ſanction of theſe condi-

tions—NATURE of the IRRITANCY which a non-compliance with theſe conditions will create.

LECTURE L.

ENTAILS continued.

THINGS which the heir is PROHIBITED from DOING.

LECTURE LI.

ENTAILS continued.

IRRITANT and RESOLUTIVE CLAUSES, by which the conditions of the entail are guarded—CONDITIONS in favour of the heirs, enlarging their powers—as to make proviſions to wives and children—EFFECT of directing the conditions againſt the heirs of entail only—RULES of PRACTICE on this point—concluding remarks on this form of deed.

XIII. EXAMINATION.

SUBJECTS OF EXAMINATION. ENTAILS.

In preparing for this examination, the ſtudent, in addition to his notes, will peruſe § 9. *and* 16., *inclu-ſive, of tit.* 8. *B.* 3. *of the Inſtitutes.*

LECTURE LII.

SERVICES.

THE NATURE and EFFECT of the SERVICE—HISTORY of the form—GENERAL SERVICE—to whom the brieve is directed—form of the execution—OBJECTIONS to the proceedings before the jury be called—to the brieve—to the act of proclaiming it—or to the execution—CHUSING of the JURY—CLAIM to the jury—DUTY of the man of buſineſs conducting the ſervice—of the man of buſineſs oppoſing the ſervice—PROOF of the DEATH—CHARACTER of the CLAIMANT, and the evidence of his connection—OBJECTION of illegitimacy, and effect of letters of legitimation.

LECTURE LIII.

SERVICES continued.

IN the SERVICE in GENERAL, ought the deed to be ſpecified under which the claim is made—remaining part of the form of the general ſervice—SPECIAL SERVICE—HEADS of the brieve—of the claim, and evidence neceſſary to be brought, on the different points—SERVICE before the MACERS—SERVICE *cum beneficio inventarii.*

LECTURE LIV.

SERVICES continued.

OBJECTIONS that may be brought in OPPOSITION to the SERVICE—where there is a feudal title in the oppoſer—where there is a nearer heir—*in utero*—in poſſibility—DIFFERENCE in the effect betwixt a GENERAL and SPECIAL SERVICE—the form of the SERVICE conſidered—1. As it is affected by the ſtate of the titles in the anceſtor—2. From the terms of the deſtination.

LECTURE LV.

SERVICES continued.

THE FORM of the SERVICE as affected by the terms of the DESTINATION—3. How far a ſervice in one character will carry a right to a ſubject deſtined to a deſcription of heirs neceſſarily falling under the character in which the heir has been ſerved.

LECTURE LVI.

SERVICES continued.

THE THIRD HEAD continued—SERVICES required in particular ſubjects—1. IN A RIGHT of REVER-

SION—2. IN A TRUST ESTATE—3. IN A MOVEABLE BOND, to heirs excluding executors—PRECEPT of CLARE CONSTAT—under what character the precept must be directed—ADJUDICATION, on a TRUST BOND for the purpose of constituting a title—CONCLUSION.

END OF THE FIRST PART OF THE COURSE.

SECOND PART OF THE COURSE.

LECTURE I.

MOVEABLE BOND.

HISTORY of the BOND—FORM of this DEED—designation of the parties—receipt of the money—effect of prior tranſactions betwixt the parties—RULES of PRACTICE—How far the evidence of the narrative is to be affected by parole proof—by what means diſproved—when diſproved, what evidence admitted to prove the real cauſe—bonds to near relations, and effect of the act 1621—where bonds are diſcharged as the cauſe of granting a diſpoſition—PRACTICAL RULES drawn from theſe caſes.

LECTURE II.

MOVEABLE BOND Continued.

OBLIGATORY part of the BOND—deſcription of the debtor—order in which the heirs of the debtor are liable—right of diſcuſſion—renunciation of this privilege—effect of this clauſe on the heirs—where debtors bound jointly—jointly and ſeverally—or as principal and full debtor—Are co-obligants cautioners for each other?—form of binding a mercantile company—DESCRIPTION of the

CREDITOR and DESTINATION of the BOND—different ſubſtitutions and their effects conſidered—May the inſtitute in a bond defeat the ſubſtitution—Is he reſtricted by a prohibitory clauſe—EFFECT of a CLAUSE of RETURN—CONCLUSIONS on this ſubject—ERRORS in regard to the ſum, term of payment at what diſtance of time it is uſually made—FORMS of payment of the INTEREST—In what reſpect the heritable and moveable bonds differ in regard to the terms of payment of the intereſt—Does the ſtipulation of 5 per cent. half yearly, infringe the ſtatute againſt uſury—how far intereſt may be accumulated—Can intereſt be taken before hand—concluſion on the ſubject of intereſt.

LECTURE III.

MOVEABLE BOND Continued.

THE EXTENT of the PENALTY in the bond—nature of it—rule of practice where an action is raiſed on a bond—effect of a decree for a penalty—conſequence of an omiſſion of the penalty—CLAUSE of REGISTRATION—nature of the clauſe—ERRORS committed on this CLAUSE—Can a bond ſigned by initials be the ground of a decree of regiſtration—CAUTIONARY OBLIGATIONS—the nature of this obligation by the Roman forms—by ours—The effect produced on our forms by the privileges given to cautioners—An attempt by the legiſlature to relieve the cautioner—FORMS of expreſſing this OBLIGATION—where the cautioner is bound ſimply—

the powers poſſeſſed in that caſe by the creditor—RELIEF competent to the cautioners under this obligation—where the cautioner is bound jointly and ſeverally—effect of this obligation on the privileges of the cautioner—the extent of the relief competent to the cautioner—Is it competent independently of the clauſe of relief?—CONCLUSIONS—the clauſe of relief by ſecond againſt prior cautioners—argument on which this point turns—caſes—RULES of PRACTICE ariſing from theſe caſes.

LECTURE IV.

COMMENTARY on the ACT 1695. c. 5. in regard to CAUTIONERS.

I. EXAMINATION.

The Subjects of Examination are the contents of the four preceding lectures; and, in addition to the notes taken by the ſtudent, he will peruſe ſect. 3, 4, 5, 6, 7, *of tit.* 2. *B.* ii., *and ſect.* 22, 23, 24, 25, 26, 27, 29, 30, 33. *of tit.* 3. *B.* iii.

LECTURE V.

MOVEABLE BOND Continued.

CHANGES occaſioned by the STATE of the PARTIES—OBLIGATIONS by a married woman—effect of her oath not to quarrel the obligation—exception from the general rule—the effect of her obligation—when reſtricted to her own property—when ſhe has a ſeparate eſtate—In what manner can ſhe give

ſecurity to a creditor—RULES of PRACTICE—OBLIGATIONS by thoſe acting under delegated powers—caſe of factors—of curators—where the minor is ſuppoſed to be of age—where he is in trade—PRACTICAL RULES—MAGISTRATES—where they bind the community—where they bind themſelves alſo—PRACTICAL RULES—FACTORS—requiſites of the bond—effect of taking the bond in his own name.

LECTURE VI.

MOVEABLE BOND Continued.

CAUSES of GRANTING the BOND—*ob turpem cauſam* as—adultery—the bringing about a marriage—procuring an office—procuring a pardon—*ſponſio ludicra*—VARIETIES in the BOND—CORROBORATION—ſituations in which it may be of uſe—form of the bond—effect of the act 1696 on this deed—BOND of RELIEF—form of the deed—advantages attending this form—GENERAL OBSERVATIONS on the nature of BONDS.

LECTURE VII.

ASSIGNATION.

Points to be attended to in the aſſignation—form of the deed—NARRATIVE and effect of errors in this clauſe—the power of a factor in purchaſing the debts of his conſtituent—DISPOSITIVE CLAUSE—effect of the deſtination in the

bond on this clauſe of the aſſignation—OBSERVATIONS on the nature of this clauſe—the power of the aſſignee in regard to the DILIGENCE raiſed by the CEDENT.

LECTURE VIII.

ASSIGNATION Continued.

CLAUSE of WARRANDICE—INTRODUCTORY OBSERVATIONS on the nature of WARRANDICE and explanatory of it—WARRANDICE of perſonal obligation—the COMMON WARRANDICE of the aſſignation—the reaſon why this has been adopted—the nature of ABSOLUTE warrandice of perſonal obligation—of the implied warrandice of the aſſignation—the diſtinction conſidered betwixt the abſolute warrandice of perſonal obligation, and the implied warrandice of perſonal obligation—in what caſes the ſolvency of the debtor is warranted—the natural extent of ſuch warrandice, even when inſolvency is included—the neceſſity where this obligation is to be further extended, of expreſſing the warrandice ſo as to comprehend the caſes in view—the effect of warrandice when incurred—SUMMING up of this ſubject and PRACTICAL RULES.

II. EXAMINATION.

SUBJECT OF EXAMINATION.

THE POWERS *of* PARTIES *in granting* BONDS—*The* CAUSES *for which* BONDS *may be* GRANTED—VARIE-

TIES *in the form of the* BOND—FORM *of the* ASSIGNATION—*Nature and effect of the* WARRANDICE *of* PERSONAL OBLIGATION.

The ſtudent, in preparing for this examination, may turn up the Inſtitute, as directed by the index on the different ſubjects of examination, but it is principally to his notes that he ought to truſt.

LECTURE IX.

ASSIGNATION Continued.

CLAUSE of DELIVERY—CLAUSE of REGISTRATION—TESTING CLAUSE—INTIMATION of the aſſignation—nature and effect of this intimation—form of the intimation perſonally—at the debtor's dwelling-houſe—where he is out of the kingdom—INTIMATION by a holograph marking of the debtor—its effect—CIRCUMSTANCES held to be equivalent to INTIMATION—the effect of intimation in queſtions with the cedent—with the debtor—with creditors of the cedent.

LECTURE X.

TRANSLATION.

DIFFERENCE betwixt the form of the CLAUSE of CONVEYANCE of the TRANSLATION, and the ſame clauſe in the ASSIGNATION—obſervations on this form of deed, and on the RETROCESSION—DISCHARGE—form of this deed where no diligence has been

done, and where the bond remains in the hands of the original creditor—form of the diſcharge where the bond has paſſed through different hands, or been put on record—payment to an heir—the conſequence of a defect in his title—DISCHARGE by a minor paſt pupillarity—cauſe of granting—where the payment is made by a third party for behoof of the debtor—REMARK in regard to the partial diſcharge—CLAUSE of DISCHARGE—WARRANDICE—obſervations on the DISCHARGE and ASSIGNATIONS.

LECTURE XI.

ACTIONS.

INTRODUCTION to the conſideration of thoſe forms by which the obligations and conditions of the deeds we have been conſidering are carried into effect—CLAUSE of REGISTRATION—form of regiſtration ſo early as the 7th century—form of regiſtration and conſent to the juriſdiction of the Church Courts, during the 13th and 14th centuries—antient form of this clauſe in this country—account of the act of regiſtration, as appearing in our writers—form of the modern clauſe—by what means it has been ſaved from falling on the death of the granter or receiver—COMMENTARY on the TERMS of the CLAUSE—can a deed be recorded in the books of a court, to the juriſdiction of which the debtor is not amenable, and where the ſum exceeds that for which the court can give decree—or what

if the ground of debt has been regiſtered before the term of payment—does regiſtration in the books of a judge, give juriſdiction to that judge, enabling him to decide all queſtions that may ariſe betwixt the parties, in regard to the recorded deed.

LECTURE XII.

Actions.

General observations on the nature of actions,*—Submissions—nature of the contract and original form of the ſubmiſſion—preſent form of the deed—by whom a ſubmiſſion may be entered into—clause of submission—general or particular nature of this clauſe—clause empowering the arbiters to receive the pleas of the parties, take evidence, and decide in the matters ſubmitted—1. the power given to the arbiters—2. the day within which the decree muſt be pronounced—3. the penalty.

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* I propoſe in the 6th Volume of the Syſtem of Styles, to give Summonſes, and the form of bringing them into Court, and of conducting the action to a concluſion; and as I mean to treat theſe forms in a more particular manner than I have treated any other point that has been taken up in that collection, I ſhall be able to throw out thoſe lectures which were read during the laſt ſeſſion on the form of the ſummons, and the proceedings in Court. This 6th Volume will be publiſhed before the meeting of the ſummer ſeſſion 1801.

III. EXAMINATION.

Subject of Examination.

Form *of* intimating *the* assignation *and the* effect *of the* intimation—Form *of the* translation *and of the* discharge *of the perſonal* bond—Clause *of* registration—Form *of the* submission.

In preparing for this examination, the ſtudent will peruſe the whole of title 5th, of the 3d book of the Inſtitutes, and alſo § 16, 17, 18, 19, and 20. of the 3d title of B. iv.

LECTURE XIII.

Submissions.

The subject continued—the clause of registration—clauses for preſerving the submission in force notwithſtanding the death of either party, and for preſerving the evidence that may be taken in the ſubmiſſion—procedure under the ſubmiſſion—prorogations—where they become neceſſary—what forms ought to attend them—the means by which witneſſes are brought before an arbiter—the forms of appointing an oversman—form of the decree arbitral—it muſt be given out within the time allowed by the decree arbitral—how is this time computed?

LECTURE XIV.

Submissions continued.

Recapitulation of the rule, that the decree must be signed within the time allowed by the submission—distinction betwixt the pronouncing and signing a decree—power of the arbiters over the decree previous to delivery—rules in regard to this point—formalities to be observed in the decree—observations on the terms of the decree-arbitral—can an arbiter be forced to pronounce a decree-arbitral—cases—conclusions on this point—grounds of reduction of a decree-arbitral—A. S. on this subject—cases in explanation of this law—how far an arbiter will be allowed to explain his meaning, as expressed in the decree-arbitral, after delivery of the decree.

LECTURE XV.

Diligence, real and personal.

History of diligence in our old law, and its transition to modern forms—separation into real and personal diligence—personal diligence—the warrants of personal diligence—nature of signet letters—letters of horning—commentary on the form of these letters—narrative.

LECTURE XVI.

Letters of Horning Continued.

Will of the letters—execution of the letters—observations on the charge given by the meſſengers, as regulated by the act 1540, c. 75.—form of the denunciation, with its effect—registration of the letters and execution—letters of caption—observations on the nature of impriſonment.

IV. EXAMINATION.

Subject of Examination.

Submissions, *and the form of the* decree-arbitral—letters *of* horning *and* caption, *their* warrants, *and the manner of* executing *the* horning.

In preparing for this examination, the ſtudent, in addition to his notes, may conſult § 16. 17. 18. 19. 20. *tit.* 3. *b.* iv., *and* § 24. 25. 26. *tit.* 5. *b.* 2.

LECTURE XVII.

Caption continued.

General view of the nature of the caption, and of imprisonment under it—form of executing the caption—at what times it may be executed—in what places—againſt what perſons—forms attend-

ing the IMPRISONMENT—different ſteps in the act of impriſonment—RULES for the directions to be given to meſſengers with regard to impriſonment—the power of the meſſenger to receive payment—directions to be given him on this point.

LECTURE XVIII.

POINDING.

NATURE of our ancient POINDING—cauſes of the changes which it underwent—WARRANT of the POINDING—FORM of it, prior to the late bankrupt act—terms of the act, and form of the procedure and execution ſince that time.

LECTURE XIX.

ADJUDICATION.

HISTORY of the APPRIZING of LAND—on what authority it proceeded prior to the 1469—effect of appointing a ſheriff in that part, before whom the action might proceed—diſpenſation as to the place of holding the court—FORM of the ADJUDICATION—BILL to the Lords—FORM of the SUMMONS—ſpecial concluſion—can it be omitted—general concluſion—is it regular to conclude for a fifth part more in the general adjudication—A. S. 1684—PENALTIES—termly penalties—WILL of the SUMMONS.

LECTURE XX.

ADJUDICATION continued.

GROUNDS of the ADJUDICATION—what evidence is required of the debt—decree of conſtitution where the claim is not aſcertained—two plans propoſed where the amount of the claim is uncertain—theſe plans conſidered—NATURE of an ADJUDICATION in SECURITY—introduction of it into practice—form of this adjudication—effect of it—ARTICULATE ADJUDICATION—examples of the form as appearing in the decided caſes—defect of theſe—form propoſed.

V. EXAMINATION.

SUBJECT OF THE EXAMINATION.

LETTERS *of* CAPTION, *and the manner of* EXECUTING *them*—FORM *of the* POINDING—ADJUDICATION—*form of the* SUMMONS, *and* GROUNDS *on which it can proceed.*

LECTURE XXI.

ADJUDICATION.

FORM of PROCEEDING in the ACTION—LITIGIOSITY produced by the execution—INTIMATION of the action—objects of the act 23d Geo. III. c. 18.—queſtions under that act—act 33d Geo. III. c. 74.—changes produced by it—powers of the court to

diſpenſe with the ſecond diet—on what it is founded—extent of this power—what other forms may be abridged—method of COMPLETING the ADJUDICATION—1. In competition with heritable rights—2. For the purpoſe of rendering an adjudication the firſt effectual one.

LECTURE XXII.

INHIBITION.

ORIGIN of this DILIGENCE—FORM of the LETTERS—of the EXECUTION—REGISTRATION of the letters and execution—WARRANTS on which theſe letters may proceed—the SUBJECTS which fall under this diligence—the DEEDS againſt which it ſtrikes—the NATURE of the ſecurity which it affords—the LITIGIOSITY which ariſes from it.

LECTURE XXIII.

ARRESTMENT.

HISTORY of this FORM—WARRANTS on which it may proceed—LETTERS of ARRESTMENT—commentary on the terms—on what claims it may proceed—EXECUTION of the ARRESTMENT—form of the execution—effect of the death of the arreſter—FURTHCOMING, form of the action—its effect—OBSERVATIONS on the nature of this diligence—when ſingle—when in competition—regulations by which the injuſtice of theſe preferences is done away—MULTIPLEPOINDING—FORM of the ACTION, and its EFFECTS.

LECTURE XXIV.

ACTIONS and EXECUTION at the INSTANCE of the HEIRS of CREDITORS.

EXPLANATION of the MANNER in which the TITLE of an HEIR muſt be COMPLETED, under the different circumſtances that may occur, in order to veſt in him a proper TITLE to PROSECUTE the neceſſary actions for recovering a debt.

VI. EXAMINATION.

SUBJECT OF EXAMINATION.

FORMS *of* PROCEEDING *in the* ADJUDICATION—INHIBITION, *form—and manner of* EXECUTING—ARRESTMENT, *form—manner of* EXECUTING, *and* EFFECT *of the* DILIGENCE—TITLE *neceſſary for proſecuting an action at the inſtance of an* HEIR.

The ſtudent will find aſſiſtance, in preparing for this examination, from peruſing what is ſtated on the ſubject of adjudication, in the Forms of Proceſs, edition 1799, *p.* 172. *Erſk. tit.* 11. *of B.* 2.—*tit.* 6. *of B.* 3.

LECTURE XXV.

ACTION and EXECUTION againſt the HEIRS of DEBTORS,

MANNER in which the ESTATES of debtors are to be affected AFTER their DEATH, under the

various circumſtances that may occur—and in which they may be affected for the debts of the HEIR as well as of the PREDECESSOR.

LECTURE XXVI.

DEEDS IN GENERAL.

OBSERVATIONS on the NATURE of our DEEDS, and on the CLAUSES of which they CONSIST; with a contraſted view of theſe clauſes, and of the uſe to which they may be applied.

LECTURE XXVII.

DEEDS IN GENERAL.

ON the METHOD of AUTHENTICATING OUR DEEDS—READING—laws in regard to the teſting of deeds—commentary on the terms of the TESTING CLAUSE—atteſtation that the deed has been ſubſcribed—name and deſignation of the writer—the number of pages of which the deed conſiſts—the date, including the time and place—the names and deſignations of the witneſſes—the atteſtation of marginal notes, &c.—manner of filling up this clauſe after the execution of the deed.

LECTURE XXVIII.

DEEDS IN GENERAL.

THE TESTING OF DEEDS—the SUBSCRIPTION of the

PARTIES—ſubſcription of witneſſes—EFFECT of a REGULAR DEED—can an inſtrumentary witneſs be called to diſprove the evidence he has given by his ſubſcription—CONCLUSIONS in regard to the ſubſcription of parties and witneſſes, and RULES in regard to the evidence ariſing from the ſubſcription of the parties and witneſſes—NOTORIAL SUBSCRIPTION of DEEDS—form of the docquet—form attending the execution of the deed—caſe where the party for whom the notaries are to ſubſcribe, is unable to read—where he is blind—the conduct proper for notaries under ſuch circumſtances.

VII. EXAMINATION.

SUBJECT OF EXAMINATION.

ACTION *and* EXECUTION *againſt* HEIRS—*On the* NATURE *of* DEEDS—*The* AUTHENTICATION *of* DEEDS.

Joined to his notes, the ſtudent will find aſſiſtance in preparing for this examination, in the Concentrated View of Deeds ſubjoined, and in the Lectures on the Teſting Clauſe, which have been publiſhed.

LECTURE XXIX.

DEEDS IN GENERAL.

DELIVERY, how far neceſſary for COMPLETING a DEED—Lord Kaimes's notion of delivery—how far this ſeems to be reconcileable with the opinions of our lawyers, and with the caſes which have been decided—the principles of this part of our law to be diſcovered from the exceptions in practice—what theſe exceptions are—RULES reſulting from this view of delivery—conditional delivery—in what caſes ACCEPTANCE is required.

LECTURE XXX.

Deeds in General.

The effect of a deed apparently regular in a Court of a Law—on what grounds it may be reduced.

LECTURE XXXI.

Deeds in General.

Proving the tenor—where a deed has been loſt, by what means, and on what evidence it may be proved, and the tenor of it restored---the form of the process—the effect produced by the renovation of the deed.

LECTURE XXXII.

Deeds in General.

The interpretation of deeds in a court of law —conclusion.

VIII. EXAMINATION.

Subject of the Examination.

Delivery—Grounds *of* reduction—*Of a deed apparently regular*—Proving *the* tenor *of a* deed, *and the* interpretation *of* deeds.

On theſe points the ſtudent may turn to the Inſtitutes, as directed by the index, but it is principally from his notes that he will prepare himſelf.

The End of the Course.

A

CONCENTRATED VIEW

OF THE

DEEDS USED IN SCOTLAND.

THE view which I am now to give of our deeds, may perhaps appear, to the conveyancer, to be fanciful rather than uſeful. But, I am perſuaded, it will be found, on a due conſideration, to be a view exceedingly uſeful to the ſtudent, if not to thoſe further advanced in the profeſſion; and it may not be improper to ſubjoin a few words, in explanation of what is at leaſt a new attempt.

A ſyſtem of conveyancing neceſſarily ſwells out into many volumes. We have deed after deed, compoſed of the ſame clauſes, but containing ſome peculiarities in the rights of the parties, or in the nature of the ſubject, which entitle them to their place there, as explanatory of the tranſactions of buſineſs; or as forms neceſſary for thoſe engaged in practice. But, to the ſtudent, this ſyſtem appears ſo complicated as to preſent to him an inſurmount-

able taſk. This obſtacle, it is ſurely of importance to remove; and it is to be done only by an accurate analyſis, which ſhall prove to him that the conſtituent parts of that maſs of deeds, which has preſented ſo forbidding an aſpect, are few in number; that the changes which take place on them ariſe from the nature of the ſubject they relate to, or the object of the deed; and that theſe being underſtood, the confuſion will vaniſh. In this way the ſtudy of deeds and clauſes appears to be, what in reality it is, an exerciſe, in which the judgment can take a part, and not a mere load to the memory.

It will appear from the general table, which I have drawn up as the reſult of the whole, that our voluntary deeds, with a few exceptions, do not much exceed thirty; and that even theſe might be reduced to twelve original deeds:—as, 1. The Charter. 2. The Diſpoſition to a Purchaſer. 3. The Diſpoſition to an Heir. 4. The Heritable Bond. 5. Diſpoſition of that Bond. 6. Its Diſcharge and Renunciation. 7. The Moveable Bond. 8. The Aſſignation. 9. The Diſcharge of it. 10. The Latter Will. 11. The Leaſe. 12. and *laſtly*, Contracts.

It is from the changes that take place on theſe, that the apparent variety in our deeds ariſes. Thus, under the head of diſpoſitions to a purchaſer, will be found the varieties marked in the Table. In all theſe deeds there is the ſame number of clauſes; they bear the ſame name as narrative, diſpoſitive clauſe, and ſo on. But, under the ſame

name, theſe clauſes ſuffer changes neceſſary for adapting them to the purpoſe of the deed. Thus, for inſtance, the diſpoſitive clauſe of the common diſpoſition, No 1, differs from the diſpoſitive clauſe of the diſpoſition of teinds, No 5.; of patronage, No 6.; of burgage ſubjects, No 9.; or of ſervitudes, No 10.; and they all vary from each other: but this ariſes from the deſcription of the reſpective ſubjects; ſo that while the principal parts, and general nature of the clauſe remain the ſame, a change takes place on it, to fit it for conveying that particular ſubject which it is the object of the deed to convey.

In the ſame way the diſpoſitive clauſe of the common diſpoſition, No 1. differs from the diſpoſition of real warrandice, No 8., or of excambion No 7.; not becauſe the ſubjects to be conveyed by theſe deeds are different; but becauſe the parties have different objects in view. In the diſpoſition of real warrandice, in caſe of one eſtate being evicted, another is ſubſtituted in its place. The excambion is an exchange of one eſtate for another, which forms a kind of double diſpoſition; and, of courſe, in both caſes, a neceſſary change from the form of the common diſpoſition, where an eſtate is conveyed in conſideration of a price, takes place. When, again, the original clauſes of deeds are examined, they amount to no more than twenty-five; but, turning to the diſpoſitive clauſe, a great variety of clauſes are found under the ſame denomination. This ariſes from what I have juſt been endeavouring to explain. There muſt be a diſpoſi-

tive clauſe in the common diſpoſition of land; that is, one form of the diſpoſitive clauſe. There muſt be forms for diſponing teinds, patronages, burgage ſubjects, ſervitudes: Theſe form other examples of this clauſe; and there are ſtill others, according to the objects in view, as in the caſe of a diſpoſition with real warrandice, or of an excambion. But amidſt this variety, and all thoſe changes which the ſtudent will diſcover, from a full inveſtigation of this ſubject, there are certain leading points which run through the whole clauſes of each claſs; and the varieties are to be traced to thoſe cauſes which I I have already pointed out---the nature of the ſubjects, or the object of the parties.

The ſtudent will then, in the firſt place, make himſelf maſter of the terms of the clauſe in its ſimple form; he will mark the parts of which it conſiſts, and the manner in which it is expreſſed; and, this being fixed, every variety in the clauſe will be eaſily underſtood; and he has only to attend to the object of the deed, in order to diſcover in what particular the clauſes of that deed ſhould differ from the common clauſes of the ſame denomination.

The ſtudy of our deeds, after this manner, is a labour which the ſtudent muſt take upon himſelf; it is a duty which no man can perform for him; and I have done my part, in preſenting to him a view of the clauſes of our deeds, ſo placed, that he may compare the clauſes of the ſame denomination in every deed with each other, and mark thoſe particulars in which they differ, with the reaſons of that difference. In ſhort, I have placed

before him, in one view, the materials from which he may draw a moſt uſeful view of our conveyancing.

But let me not be miſunderſtood: I have not attempted to give here the principles of conveyancing; I have given no more than what may be neceſſary for withdrawing the veil, and enabling the ſtudent to penetrate to thoſe principles, unfettered by forms, which, at the outſet of his ſtudies, are ſo formidable a barrier to him; and which, too often, have prevented young men from following a ſtudy, which, if they could eaſily have cleared of its firſt obſtructions, would have engaged their attention, and employed all their powers of mind.

But a few words further may be neceſſary, in explanation of the plan which I have followed:

Under the firſt diviſion of it, will be found examples of the conſtituent clauſes of deeds. For inſtance: firſt, the narrative is given, then the diſpoſitive clauſe, and ſo on; and under each clauſe, I have arranged every variety of it; thus preſenting, in one comparative view, all the changes neceſſary on each clauſe of the different deeds. I have alſo prefixed to each clauſe a ſhort account of it, and marked the principal parts of which it conſiſts; and this, I hope, will not be without its uſe.

The laſt part conſiſts of a table, in which I ſhow, not only what clauſes are contained in each deed, but which of the clauſes is peculiar to each. The ſtudent has here, in one view, the arrangement and names of the different deeds; and, by having recourſe to the particular clauſes pointed out in the

table, he has the preciſe clauſe of each deed. This affords him a very ſimple and very obvious way of trying his knowledge in ſtyles; for, after he has, in ſome degree, made himſelf maſter of the forms of the clauſes, let him from the table, and without having recourſe to the clauſes, make out the different deeds. He can eaſily correct himſelf; and a little practice in this will enable him to frame his deeds without the aid of a ſtyle book, at leaſt in all common matters; and will enable him to go through any examinations on this ſubject, with eaſe and ſatisfaction to himſelf.

I need ſcarcely obſerve, that what will be of uſe to the ſtudent in the manner I have pointed out, may, even to thoſe further advanced, in ſituations where they have no acceſs to a full collection of ſtyles, be occaſionally of ſervice; and that the man of buſineſs may find the advantage of having ſuch a remembrancer at his command.

I have already ſtated, that it is with a view to our voluntary conveyances only, that this table has been made up. I include under it neither ſummonſes nor ſignet letters; neither do I take notice of notorial inſtruments. Theſe are ſo different in their form, that I ſhall eaſily find an apology for excluding them; and the only other deeds not to be met with here, are of ſo trifling a nature, that I ſhall make no other apology for the want of them, than that they do not eaſily range with the others, and that I muſt have given them by themſelves.

It is to factorys, commiſſions, and powers of attorney, that I refer. But there are two deeds, of

great importance in every view, the want of which ſeem to require a more formal apology: Theſe are the deed of entail, and the marriage contract. The apology I would offer for omitting the firſt of theſe deeds, reſts upon the nature of the entail itſelf; which, in fact, contains a ſyſtem of law for regulating the ſucceſſion and management, and burdening a particular eſtate, taking it out of the protection of the common law, and hedging it round by conditions and regulations, peculiar to itſelf. So far as forms go, the ſame form is uſed as in the diſpoſition to an heir, and the ſame clauſes; the only difference is, that there are interwoven into the clauſes of the common diſpoſition, all thoſe conditions in which the peculiarities of this deed conſiſt.

The excluſion of the marriage contract, depends on grounds ſomewhat ſimilar: That deed is entirely regulated by the will of the parties. Its active part depends on the procuratory of reſignation, precept of ſaſine, and obligatory clauſes, which are to be found in the diſpoſition to an heir, or in the bond of proviſion. But there is ſo little of form in this, that when it is conſidered that it is mere form I have in view in the making up of this table, I ſhall ſtand excuſed for excluding the marriage contract.

Before proceeding to give examples of the different clauſes, it may be neceſſary to take notice of thoſe changes which ariſe from the ſtate of parties, and which may occur in moſt of the deeds, of which examples are here given.

DESCRIPTIONS OF THE PARTIES TO A DEED.

FIAR AND LIFERENTER. "I A., heritable proprietor of the fee of the lands and others underwritten, and I B., life-"renter of the faid lands." In the obligations of the deed, the parties will be thus expreſſed: "We the ſaid A. and B., "for our reſpective rights of fee and liferent, bind, &c."

HUSBAND AND WIFE. "I A., heritable proprietor of the "ſubjects aftermentioned, with conſent of B., my ſpouſe; and "I the ſaid B., for all right of liferent, conjunct fee, terce, or "other right or intereſt, legal or conventional, which I have, "or can have, in the ſaid ſubjects, with conſent of my ſaid "huſband, and we both with mutual conſent." In the after clauſes of the deed, the granters are mentioned in theſe terms: "We the ſaid A. and B., for our reſpective intereſts in the "ſaid ſubjects, and with mutual conſent, in manner foreſaid." Or, if the wife be proprietor, the parties will be thus deſcribed: "I B., heritable proprietor of the ſubjects after mention-"ed, ſpouſe of A., with conſent of my ſaid huſband; and I "the ſaid A., for all intereſt that I have, or may have, in the "ſaid ſubjects." In a moveable deed, granted by a huſband and wife, they will be thus deſcribed: "I B., with the advice "and conſent of A., my huſband; and I the ſaid A., for my-"ſelf, and for all right I can pretend to the ſums of money "after aſſigned, *jure mariti*, or otherways, and taking full bur-"den on me for my ſaid wife, and we both with joint conſent."

MINORS. While the minor is under tutory, all the deeds neceſſary in the management of his affairs, are made out in the name of the tutor alone, thus: "I A., tutor, nominated "to C., by B., his father, conformably to deed of nomination, "in my favour, of date , and recorded ."

Or where he is tutor dative, "I A., tutor dative to C., conformably to letters of tutory under the quarter seal, in my favour, dated ." Where, again, the minor is past the age of pupilarity, he may act with the consent of his curators, thus: "I C., with consent of A., curator nominated to me by the deceased B., my father, as by deed of nomination, dated , recorded ."

Executors. "I B., executor, nominated and confirmed, (or executor decerned and confirmed,) to the deceased A., by the confirmed testament, in my favour, expede before the commissary of , on the ." Or, when no confirmation has been expede, "I B., only child and executor, *qua* neareſt in kin of the deceased A."

Trustees. "We A., B., C., and D., commissioners named and appointed by E., agreeably to commission, of date ; recorded , any two of us being thereby declared a quorum, and vested with the powers herein exercised." Or, "I A., as having power and commission from B., to the effect after mentioned, by a commission in my favour, dated ; and recorded ." Or, "I A., considering that B., by a trust deed executed by him upon the , and registered , nominated and appointed me to be his trustee, for the purpose of managing his affairs, and in particular with power, &c." Or, "We A. and B., considering that C., by a trust deed, executed by him, of date , for the causes therein specified, disponed and made over to us, the lands and others after described, but in trust, for the uses, ends, and purposes, and with the powers therein expressed; and, amongst others, with the power of borrowing such sum or sums of money, as we may find necessary, for extricating his affairs, for which sums we are not only empowered to bind him personally, but to grant heritable bonds and securities over his said lands, and containing all the usual and necessary clauses; which trust deed, of date foresaid, is recorded in the

" books of Council and Seſſion, (Office ,) the ;
" That in virtue of the ſaid truſt deed, and of the precept of
" ſaſine therein contained, we were duly infeft in the ſaid
" lands, as truſtees foreſaid, and the inſtrument of ſaſine taken
" thereon, of date , recorded , as the ſaid
" truſt deed, and infeftment following thereon, in themſelves
" more fully bear."

FACTORS. " I B., factor, appointed by A., agreeably to
" factory in my favour, dated , recorded ,
" whereby I am authoriſed to receive and diſcharge the ſums
" herein aftermentioned."

CORPORATIONS. " We A., provoſt of the burgh of ,
" B., C., and D., preſent bailies thereof, E., dean of guild,
" and F., treaſurer, with conſent of the remanent members of
" the council of the ſaid burgh, for ourſelves, and for the ſaid
" remanent members, as reſpecting the community of the ſaid
" burgh." Or, where it is an incorporation, you ſay, " We
" A., deacon, and B., box-maſter, of the incorporation of
" , of the burgh of , C., D., E., and F.,
" maſters of the ſaid craft, for ourſelves, and in name and be-
" half of, and as repreſenting the whole members and bre-
" thren of the ſame."

A MERCANTILE COMPANY. " We A. and B., merchants
" in , and co-partners, under the firm of A. & Co.,
" merchants there." And in the obligations of the deed they will bind themſelves in theſe terms: " We bind and oblige
" ourſelves, jointly and ſeverally, as individuals, and our heirs,
" executors, and ſucceſſors whomſoever, as well as the ſaid co-
" partnery of A. & Co."

Narrative.
Dispositive clause.
Quaequidem.
Tenendas.
Reddendo.
Powers vested in trustees.
Nomination of an executor.
Obligatory clause.
Obligation to infeft.
Procuratory of resignation.
Clause of warrandice.
Salvo jure cujuslibet.
Obligatory clause.
Assignation to writs and rents, and warrandice.
Conditions, in case the creditor shall poind under the heritable bond.
Reservation of the liferent, and power to alter.
Revocation of former deeds.
Dispensation with delivery.
Delivery of the title deeds.
Submission, in the event of a dispute.
Clause of registration.
Precept of sasine.
Testing clause.

GENERAL TABLE OF THE CLAUSES OF DEEDS.

	1 Narrative.	2 Dispositive clause.	3 Quæquidem.	4 Tenendas.	5 Reddendo.	6 Powers vested in truſtees.	7 Nomination of an executor.	8 Obligatory clauſe.	9 Obligation to infeft.	10 Procuratory of reſignation.	11 Clauſe of warrandice.	12 Salvo jure cujuslibet.	13 Obligatory clauſe.	14 Aſſignation to writs and rents, and warrandice.	15 Conditions, in caſe the creditor ſhall poſſeſs under the heritable bond.	16 Reſervation of the liferent, and power to alter.	17 Revocation of former deeds.	18 Diſpenſation with delivery.	19 Delivery of the title deeds.	20 Submiſſion, in the event of a diſpute.	21 Clauſe of regiſtration.	22 Precept of ſaſine.	23 Teſting clauſe.
I. Charters.																							
1. Original, as,																							
1. Feu charter	1	1	-	1	1	-	-	-	-	-	1	-	-	2	-	-	-	-	-	-	2	1	1 or 2
2. Blench charter	1	1	-	2	2	-	-	-	-	-	1	-	-	2	-	-	-	-	-	-	2	1	1 or 2
2. By progreſs, as,																							
1. Charter of reſignation	1	2	1	1 or 2	1 or 2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	1 or 2
2. ——— of confirmation	1	3	-	1 or 2	1 or 2	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	2	-	1 or 2
3. ——— of reſignation and confirmation	1	2 or 3	1	1 or 2	1 or 2	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	2	2	1 or 2
4. ——— of adjudication	2	3	2	1 or 2	1 or 2	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	2	3	1 or 2
5. Precept of clare conſtat	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	1 or 2
II. Diſpoſitions, as,																							
1. To purchaſers, as,																							

5. Precept of clare constat	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	1 or 2
II. Dispositions, as,																							
1. To purchasers, as,																							
1. The common disposition	3	4	-	-	-	-	-	-	1	1 or 2	1	-	-	1	-	-	-	-	1	-	3	5	1 or 2
2. Disposition and assignation	3	4	-	-	-	-	-	-	2	2	1	-	-	1	-	-	-	-	1	-	3	-	1 or 2
3. By the superior to his vassal	3	4	-	-	-	-	-	-	1	1	1	-	-	1	-	-	-	-	1	-	3	6	1 or 2
4. By the vassal to his superior	3	4	-	-	-	-	-	-	1	3	1	-	-	1	-	-	-	-	1	-	3	-	1 or 2
5. Disposition of teinds	3	5	-	-	-	-	-	-	1 or 2	1 or 3	1	-	-	-	-	-	-	-	1	-	3	7	1 or 2
6. ——— of a right of patronage	3	6	-	-	-	-	-	-	1 or 2	1 or 3	1	-	-	6	-	-	-	-	1	-	3	12	1 or 2
7. Contract of excambion	9	7	-	-	-	-	-	-	4	7	1	-	-	1	-	-	-	-	1	-	3	8	1 or 2
8. Disposition with real warrandice	3	8	-	-	-	-	-	-	1	1 or 3	1	-	-	1	-	-	-	-	1	-	3	9	1 or 2
9. Disposition to burgage subjects	3	4	-	-	-	-	-	-	5	8	1	-	-	1	-	-	-	-	1	-	3	-	1 or 2
10. Disposition of servitude	3	12	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1	-	3	-	1 or 2
11. Procuratory of resignation, ad remanen.	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-	-	-	2	-	1 or 2
2. To heirs, as,																							
1. General disposition	8	14	-	-	-	-	1	-	6	-	-	-	7	-	-	1	1	1	-	-	2	-	1 or 2
2. Disposition burdened with legacies	8	13	-	-	-	-	1 or 2	-	1	1 or 3	-	-	7	5	-	1	1	1	-	-	2	5	1 or 2
3. Trust disposition	-	9	-	-	-	1	2	-	1	1 or 3	-	-	-	5	-	1	1	1	-	-	2	5	1 or 2
III. Leases	9	15	-	-	-	-	-	-	-	-	1	-	4, 5, 6	-	-	-	-	-	-	1	5	-	3
IV. Securities for Debt.																							
1. Heritable, as,																							
1. Heritable bond	4	-	-	-	-	-	-	1	2	6	1	-	-	3	1	-	-	-	1	-	1	10	1 or 2
2. Bond and disposition in security	4	10	-	-	-	-	-	-	2	6	2	-	-	3	1	-	-	-	1	-	1	11	1 or 2
3. Disposition of an heritable bond	7	11	-	-	-	-	-	-	3	6	1	-	-	4	-	-	-	-	1	-	3	10	1 or 2
4. Discharge of an heritable bond	7	19	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1	-	4	-	1 or 2
2. Moveable, as,									-	-													
1. Bond of borrowed money	4	-	-	-	-	-	-	1			-	-	-	-	-	-	-	-	-	-	1	-	1 or 2
2. Bond of corroboration	6	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1 or 2
3. Assignation	5	16	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	1	-	3	-	1 or 2
4. Translation	5	17	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	1	-	3	-	1 or 2
5. Discharge	5	18	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1	-	3	-	1 or 2
6. Bond of provision	8	-	-	-	-	-	-	3	-	-	-	-	-	-	-	1	-	-	-	-	3	-	1 or 2
V. Disposition of Moveables	8	21	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	2	-	1 or 2
VI. Latter Will	-	20	-	-	-	-	1 or 2	-	-	-	-	-	7	-	-	1	1	1	-	-	2	-	1 or 2
VII. Contracts	9	-	-	-	-	-	-	1	-	-	-	-	5	-	-	-	-	-	-	1	5	-	3

*** *It may be proper to mention, that the numbers in this table refer to the corresponding numbers of the clauses:*

CLAUSES OF DEEDS.

NARRATIVE.

THE narrative of a deed contains, 1. The name and deſignation, or deſcription, of the granter. 2. The name and deſignation of the receiver. And 3. The cauſe of granting the deed.

The cauſe of granting may be onerous; that is, where a valuable conſideration is given; or it may be gratuitous, where no value has been given; the gift ſpringing from duty or affection. The narrative will accordingly expreſs the cauſe. It may happen, too, that the deed is granted by a perſon whoſe right depends on other deeds; which will, in that caſe, be narrated; that is, ſhortly deſcribed, that the deed may afford evidence of the granter's poſſeſſing that power which he means to exerciſe. Or the narrative may be neceſſary for explaining the nature and extent of the right which the deed is meant to confer.

No I.

ORIGINAL CHARTER.—FEU OR BLANCH.—CHARTER OF RESIGNATION.—CHARTER OF CONFIRMATION.

KNOW ALL MEN by theſe preſents, That I, A., heritable proprietor of the lands and others after diſponed, in conſideration of a certain ſum of money paid to me by B.,

of which I grant the receipt, and discharge him and his heirs for ever. (*Or where it is a feu charter, say,* "And also, in consideration of the feu-duties and services herein contained.") Have SOLD.

II.

CHARTER OF ADJUDICATION.

KNOW ALL MEN by these presents, That I, A. Esquire, in obedience to a charge of horning, and in consideration of a certain sum, in name of composition, paid to me by B., of which I hereby discharge him and his heirs for ever, have GIVEN, &c.

III.

DISPOSITION TO A PURCHASER.

I A. Esq. heritable proprietor of the lands and others after disponed, IN CONSIDERATION of a sum of money paid to me by B., as the price of the said subjects, of which price I hereby grant the receipt, and discharge him for ever, have SOLD, &c.

IV.

BOND OF BORROWED MONEY.

I A., grant me to have borrowed, and instantly received from B., the sum of L. 1000 Sterling, whereof I hereby acknowledge the receipt, renouncing all exceptions in the contrary; which sum, &c.

V.

ASSIGNATION, TRANSLATION, DISCHARGE.

I B., considering that A., by his bond, of date , acknowledged him to have received from me the sum of L. ; which sum he bound and obliged him, his heirs, executors, and successors, to pay to me, my heirs, executors, and assignees, and that at the term of , then next, with L. Sterling of liquidated penalty in case of failure,

and the legal intereſt of the ſaid principal ſum, from the date of the ſaid bond, to the ſaid term of payment, and thereafter during the not payment thereof, as the ſaid bond in itſelf more fully bears. (*Or where diligence has been raiſed on the bond, add,*) Upon which bond I raiſed letters of horning, dated and ſigneted , and by virtue thereof cauſed charge the ſaid A., to make payment to me of the foreſaid principal ſum, penalty, and annualrents; and thereafter I raiſed letters of caption thereon, dated and ſigneted , as the ſaid letters of horning, with the executions thereof, and letters of caption, more fully bear. *Or where it has been aſſigned, add further,* To which bond, and ſums of money therein contained, I have now right from the ſaid , by aſſignation in my favour, of date , as the ſaid aſſignation alſo more fully bears. AND NOW SEEING, that D. (*or if it be a diſcharge, ſay,* The ſaid A.) has made payment to me of the ſaid principal ſum of L. , with L. of intereſt due thereon ſince , (the intereſt previous to that having been formerly paid up and diſcharged,) and of the ſum of L. , being the expences incurred in raiſing the ſaid diligence, to which ſum I hereby reſtrict the ſaid penalty, amounting in whole, the ſaid ſum, to the ſum of L. , whereof I hereby grant the receipt. THEREFORE, &c.

VI.

BOND OF CORROBORATION.

The bond will be narrated as in No V. down to theſe words, "as the ſaid bond more fully bears," *with this difference, that where the bond of corroboration is granted by the original debtor, the narrative will proceed in the firſt perſon,* "Conſidering that by my bond," *and ſo on. After the words,* "more fully bears," *the narrative will proceed thus:* AND NOW SEEING, that the foreſaid principal ſum of L. , together with the intereſts thereof from the term of , are ſtill due, extending, when accumulated, at the date hereof, to the ſum of L. , and that the ſaid has agreed to ſupercede payment of the ſaid accumulated ſum of L. to the term of

after mentioned, on my granting theſe preſents in manner underwritten. THEREFORE, &c.

VII.

DISPOSITION of an HERITABLE BOND. DISCHARGE and RENUNCIATION of the HERITABLE BOND.

I, B. Eſquire, conſidering, that A., by his heritable bond, dated for the cauſes therein ſpecified, bound and obliged himſelf, his heirs, executors, and ſucceſſors, to repay to me, my heirs, or aſſignees, the ſum of L. 1000, and that at the term of then next, with L. 200 of liquidate penalty in caſe of failure; and the due and legal annualrent of the ſaid principal ſum, from the date thereof, to the ſaid term of payment; and yearly, termly, and proportionally, thereafter, during the not-payment thereof; and that at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid annualrent, on the term of Martinmas then next, for what ſhould be due, from the date thereof to that term; and the next term's payment of the ſaid annualrent, at the term of Whitſunday, for the half year immediately preceding that term; and ſo forth, at the ſaid two terms of Martinmas and Whitſunday, yearly, thereafter, by equal portions, during the not-payment of the ſaid principal ſum, with L. 5 of liquidate penalty, for each term's failure in payment of the ſaid annualrent at the terms above-mentioned. And, for my further ſecurity, and more certain payment of the foreſaid ſums of money, the ſaid thereby bound and obliged himſelf, his heirs and ſucceſſors, upon his own expence, duly and lawfully to infeft and ſeiſe me, and my foreſaids, heritably, but under redemption, in manner thereinmentioned; not only in all and whole an annualrent of L. 50 or ſuch an annualrent, leſs or more, as ſhall correſpond, by law, for the time, to the foreſaid principal ſum of L. 1000, to be uplifted and taken at the terms foreſaid, during the not-redemption; forth of all and whole the lands, and others

herein-after deſcribed; and forth of any part or portion thereof; and of the firſt and readieſt of the rents and profits of the ſame: But alſo in all and whole the ſaid lands, and others, themſelves in further ſecurity, to me and my foreſaids, of the payment of the ſums of money, principal, annualrent, and liquidate expences, and termly failures above-mentioned; and that by two ſeveral infeftments and manner of holding; the one thereof to be holden of the ſaid A. and his foreſaids, and the other of the ſaid infeftments, to be holden from him and his foreſaids, of his immediate lawful ſuperiors thereof, in manner mentioned in the ſaid heritable bond, as the ſame, containing procuratory of reſignation, precept of ſaſine, clauſe of abſolute warrandice, clauſe of reverſion, with other uſual and neceſſary clauſes, in itſelf more fully bears. In virtue of which heritable bond, and precept of ſaſine therein-contained, I was duly infeft and ſeized in the ſaid annualrent; and alſo in the ſaid lands, and others, foreſaid themſelves, in ſecurity, as ſaid is, conform to an inſtrument of ſaſine in my favour, dated and regiſtered . And further, conſidering that has made payment to me of the ſaid principal ſum of L. 1000 with the intereſt thereof, from to this date, extending in whole to the ſum of L. ; of which I acknowledge the receipt. THEREFORE, &c.

VIII.

BOND OF PROVISION, OR OTHER GRATUITOUS DEED.

I A., for the love and affection which I have for B.; and for certain other good cauſes and conſiderations, DO hereby, &c.

IX.

CONTRACT.

IT is CONTRACTED and AGREED upon betwixt A., ON THE ONE PART, and B., ON THE OTHER PART, in manner following: THAT is to SAY, &c,

DISPOSITIVE CLAUSE.

THE diſpoſitive clauſe, in heritable rights, contains, 1. The deſcription of the diſponees. 2. The deſcription of the ſubject conveyed. And, 3. The conditions under which the right is given.—It will be uſeful to the ſtudent to compare the examples of this clauſe, which I give here, with each other, and to mark the peculiarities of each. I have arranged them *1ſt*, As belonging to the charter; *2d*, To the diſpoſition; and *laſtly*, Thoſe clauſes by which a power is exerciſed, as in the nomination of an executor, or the aſſigning of a debt.

Under the head of charters, it will be proper to mark the difference betwixt the charter of confirmation, and the other claſſes of that deed; while the diſpoſitive clauſe of the diſpoſition exhibits thoſe changes that ariſe from the nature of the ſubject conveyed, or the intention of the parties, and enables the ſtudent to compare the principal diſtinction to be met with in a variety of deeds.

I ſhould conceive it to be no uſeleſs taſk, were the ſtudent, ſo far to make himſelf maſter of theſe forms, as to be able to point out the particulars in which each of theſe clauſes differs from the common diſpoſitive clauſe of the diſpoſition to a purchaſer of land; or in which the diſpoſitive clauſe of the charter differs from that of the diſpoſition.

I. Of CHARTERS.

I.

FEU CHARTER.—BLENCH CHARTER.

Have ſold, alienated, and, in feu farm, diſponed, as I, by theſe preſents, ſell, alienate, and, in feu farm, diſpone (or, in the blench charter, ſay, ſimply, "ſell alienate and diſpone,") from me, my heirs and ſucceſſors, whomſoever, to and in favour of the ſaid his heirs and aſſignees, whomſoever, heritably and irredeemably, all and whole the lands of, (*here they are deſcribed*) lying within the pariſh of and ſhire of (It is here that any reſervations are inſerted, whether they relate to mines or minerals, or to the exerciſe of any power to be reſerved by the ſuperior; or to reſtrictions, on the exerciſe of power, by the vaſſal.)

II.

CHARTER of RESIGNATION.—CHARTER of ADJUDICATION.

I A., have given, granted, and diſponed, as I hereby give, grant and diſpone; and for me, my heirs, and ſucceſſors, perpetually confirm to the ſaid his heirs and aſſignees, whomſoever, heritably and irredeemably, all and whole (*here the lands are deſcribed*), lying within the pariſh of and ſheriffdom of (Where the charter of reſignation and confirmation are united, you inſert after this clauſe, a *quæquidem*, and then the *tenendas* and *reddendo*; and theſe are followed by the clauſe of confirmation.)

III.

CHARTER of CONFIRMATION.

I A., have ratified and approved, as I hereby ratify, approve, and, for me, my heirs and ſucceſſors, perpetually confirm a diſpoſition, bearing date made and granted by

, whereby, for the cauſes therein ſpecified, he ſold, alienated, and diſponed, to and in favour of his heirs and aſſignees whomſoever, heritably and irredeemably, all and whole, (*here deſcribe the lands*), as the ſaid diſpoſition, containing an obligation to infeft the ſaid diſponee, *a me* or *de me*, with precept of ſaſine, and ſeveral other clauſes more fully bears; together alſo with the inſtrument of ſaſine following thereon in favour of , dated , and recorded ; or of whatever other dates, tenor, or contents the ſaid writings may be, in the whole heads, clauſes, tenor, and contents thereof, with all that has, or is competent to follow thereon; and further, I hereby will and grant, and for myſelf, my heirs and ſucceſſors, decern and ordain, that this preſent confirmation ſhall be as valid and effectual to all intents and purpoſes, as if the writs before confirmed had been engroſſed herein, or as if this confirmation had been made before the taking of the ſaid infeftment, wherewith, and with all objections that may lie againſt the validity of the ſaid deeds, or of this confirmation, I, for myſelf and my foreſaids, have for ever diſponced.

II. OF DISPOSITIONS.

IV.

DISPOSITION of LAND to a PURCHASER.—DISPOTION by a SUPERIOR to his VASSAL.—DISPOSITION by a VASSAL to his SUPERIOR.

HAVE SOLD and DISPONED, as I hereby SELL, ALIENATE, and DISPONE from me, my heirs, and ſucceſſors, to, and in favours of the ſaid , his heirs, and aſſignees whomſoever, heritably and irredeemably, ALL and WHOLE, (*here the lands are to be particularly deſcribed*), lying within the pariſh of , and ſheriffdom of , with all right, title, and intereſt, claim of right, property, and poſſeſſion, which I, my predeceſſors and authors, heirs, and ſucceſſors

had, have, or any wiſe may have, claim, and pretend thereto, in time coming.

V.

DISPOSITION of TEINDS.

HAVE therefore SOLD and DISPONED, as by theſe preſents, I SELL, ALIENATE, and DISPONE to, and in favour of the ſaid ; and his heirs in the lands aftermentioned, or his aſſignees whomſoever, heritably and irredeemably, ALL and WHOLE, the teinds, parſonage and viccarage, of all and whole the ſaid , his lands and eſtate of , lying, &c. with all right, title, &c. WITH the BURDEN ALWAYS, of all future augmentations to be impoſed on the teinds of the ſaid pariſh, after the free teinds of the ſaid pariſh are exhauſted, in proportion with the ſaid , (*the ſeller*), and the other heritors of the ſaid pariſh, who have acquired heritable rights to their teinds as accords of law, and alſo with the burden of his Majeſty's annuity.

VI.

DISPOSITION of a RIGHT OF PATRONAGE.

HAVE SOLD and DISPONED, as I hereby SELL, ALIENATE, and DISPONE, to and in favour of , his heirs and aſſignees whomſoever, heritably and irredeemably, all and whole the advocation, donation, and right of patronage of the pariſh and pariſh-church of , lying in the ſhire of .

VII.

CONTRACT of EXCAMBION.

The ſaid A., in implement of his part of the ſaid agreement, has EXCAMBED, SOLD, and DISPONED, as he hereby EXCAMBS, SELLS, ALIENATES, and DISPONES from himſelf, his heirs, and ſucceſſors, to and in favour of the ſaid B., his heirs, and aſſignees whomſoever, heritably and irredeemably, ALL and WHOLE, the lands of (*deſcribe them*), together with all right, title, in-

tereſt, (*as in No* iv.); IN CONSIDERATION whereof, and in implement of his part of the ſaid agreement, the ſaid B. has EXCAMBED, SOLD, ALIENATED, and DISPONED, as he hereby excambs, SELLS, ALIENATES, and DISPONES from himſelf, his heirs, and ſucceſſors, to the ſaid A., his heirs, and aſſignees whomſoever, heritably and irredeemably, ALL and WHOLE, (*here deſcribe the lands*), together with all right, title, &c. (*as before*).

VIII.

DISPOSITION of REAL WARRANDICE.

Have SOLD and DISPONED, as I hereby SELL, ALIENATE, and DISPONE from me, my heirs, and ſucceſſors, to and in favour of , his heirs and aſſignees whomſoever, heritably and irredeemably, ALL and WHOLE, the lands of , lying in the pariſh of , and ſhire of ; and that as principal, AND ALSO, ALL and WHOLE the lands of , lying in the pariſh of , and ſhire of ; and that in SPECIAL and REAL WARRANDICE of the principal lands hereby diſponed, ſo that if the ſaid principal lands, or any part thereof, ſhall be evicted from the ſaid B., or his foreſaids, THEN and in THAT CASE, the ſaid B. ſhall have free and immediate acceſs to the ſaid warrandice lands themſelves, AT LEAST to as much thereof as ſhall correſpond in quantity and quality to the ground evicted, from thenceforth, to be peaceably enjoyed and poſſeſſed by them, until they ſhall be fully and quietly repoſſeſſed of the ſaid principal lands, which may have been evicted as ſaid is, TOGETHER WITH all right, title, intereſt, (*as in No* iv.)

IX.

TRUST DISPOSITION.

GIVE, GRANT, and DISPONE, to and in favour of B., C., D., and E., and to ſuch perſon or perſons as they ſhall aſſume, in virtue of the powers herein after committed to them, and to the ſurvivors or ſurvivor of them, (the major part alive and ac-

cepting at the time, being always a quorum), AS TRUSTEES for the uſes and purpoſes after mentioned, ALL and WHOLE, (*here deſcribe the ſubjects*); AS ALSO, ALL and SUNDRY other lands and heritages, and all debts and ſums of money, heritable and moveable, and all perſonal and moveable effects of every kind and denomination belonging to me, or which ſhall belong to me at the time of my death; BUT IN TRUST ALWAYS, for the uſes and purpoſes, and under the conditions and reſervations after mentioned, viz. (here the purpoſes of the truſt will be expreſſed).

X.

DISPOSITION in SECURITY of DEBT.

Therefore, and for the further ſecurity of the ſaid , I DO hereby ſell, alienate, and diſpone to, and in favour of , heritably, but redeemably, in manner after mentioned, all and whole, (*here deſcribe the lands*), together with all right, title, intereſt, claim of right, property, and poſſeſſion, which I the ſaid , or my author had, have, or any wiſe may have, claim or pretend to the ſaid lands and others, or any part thereof, or to the mails and duties of the ſame in time coming, and that in real ſecurity and for payment to them and their foreſaids, of the foreſaid principal ſum of L. , with the ſtipulated intereſt and penalties that ſhall be incurred.

XI.

DISPOSITION of an HERITABLE BOND.

THEREFORE I have SOLD and DISPONED, as I hereby SELL, ALIENATE, and DISPONE to, and in favour of the ſaid , his heirs and aſſignees, heritably but redeemably always, and under reverſion in manner ſpecified in the ſaid heritable bond, NOT ONLY ALL and WHOLE, the foreſaid annualrent of L. Sterling, or ſuch an annualrent, leſs or more as ſhall by law correſpond to the foreſaid principal ſum of L. , to be uplifted and taken at the times before ſpeci-

fied, by equal portions, beginning the uplifting thereof at the term of next, for the annualrent then due, from preceding, and ſo forth, termly and proportionally thereafter, during the not redemption thereof, FORTH of ALL and WHOLE, (*deſcribe the lands*), or forth of any part or portion thereof, and the firſt and readieſt of the rents and profits of the ſame; BUT ALSO, ALL and WHOLE, the ſaid lands and others themſelves, in further ſecurity to the ſaid and his foreſaids, of the payment of the ſums of money, principal, annualrent, liquidate penalty, and termly failures above mentioned, TOGETHER WITH all right, title, and intereſt, which I have, or can pretend thereto, in time coming.

XII.

DISPOSITION of a RIGHT of SERVITTDE.

Have SOLD and DISPONED, as I hereby SELL and DISPONE to, and in favour of the ſaid , and his heirs and aſſignees whomſoever, for the benefit of the lands of , and for the accommodation of the tenants and poſſeſſors thereof, an heritable and irredeemable right of ſervitude and tolerance of caſting fuel, ſeal, and divot, and of paſturing cattle on the muir of , lying in the pariſh and ſhire of , WITH roads to and from the ſaid muir, and all privileges neceſſary for enjoying fully the ſaid ſervitudes, which ſervitudes ſhall commence from and after the term of .

XIII.

DISPOSITION to an HEIR.

I do hereby GIVE, GRANT, and DISPONE to, and in favour of , his heirs and aſſignees whomſoever, heritably and irredeemably, (but under the reſervations herein after expreſſed), ALL and WHOLE, (*here deſcribe the lands*).

XIV.

GENERAL DISPOSITION to an HEIR.

I do hereby GIVE, GRANT, and DISPONE to, and in favour of , his heirs and aſſignees whomſoever, heri-

tably and irredeemably, but with and under the burdens, provisions, and reservations after mentioned, ALL and WHOLE, (*here describe the lands*), AS ALSO, ALL and SUNDRY other lands and heritages, and all debts and sums of money, heritable and moveable, crop, stocking, furniture, books, silver-plate, bank-notes, money, and in general all my goods, means, and estate, of whatever denomination, heirship moveables as well as others included, which presently belong or shall belong to me at the time of my death, together with the vouchers and title-deeds thereof, and every writ necessary for conveying the lands, debts, sums of money, and others hereby disponed; AND PARTICULARLY, but without prejudice to the generality foresaid, the effects and sums of money which shall be contained in any inventary to be signed by me, as relative to these presents, which shall be as sufficient for excluding the necessity of confirmation, as if every particular thereof were herein inserted and enumerated; BUT DECLARING ALWAYS, that the said shall be BOUND and OBLIGED, as by acceptation hereof, he BINDS and OBLIGES him and his foresaids, out of the first and readiest of the estate and effects hereby conveyed, to pay all my just and lawful debts, with my funeral charges, and any legacies I may think proper to leave, and particularly the legacies following, viz. (*here the legacies are specified, narrating the sum, the creditor, the term of payment, and from what period it is to bear interest*); AND FURTHER, for carrying these presents more effectually into execution, I hereby NOMINATE and APPOINT the said to be my sole and only executor and intromitter with my moveable estate, WITH power to him to expede confirmations, and make up all other titles thereto that may be necessary.

XV.

TACK.

THAT IS TO SAY, the said A. has SET, and in consideration of the yearly rent and others after specified, SETS, and in tack and assedation, LETS to the said B., and his heirs, ALL

and whole the lands of , lying in the pariſh of , and ſhire of ; and that for the full and complete ſpace of years and crops, from and after the entry of the ſaid B. thereto; which is hereby declared to be, as to the arable land, meadow, and paſture, at the ſeparation of this preſent crop from the ground, and as to the houſes at the term of Martinmas, both in the year .

(*If there be any reſervations in favour of the landlord, of mines or minerals, or trees, or reſerved powers of any kind, it is here they ſhould be taken notice of.*)

XVI.

ASSIGNATION of PERSONAL OBLIGATION.

THEREFORE I have MADE and CONSTITUTED, as I hereby MAKE, CONSTITUTE and APPOINT the ſaid , his heirs, and aſſignees, my lawful ceſſioners and aſſignees, not only in, and to, the foreſaid principal ſum of L. Sterling, with the ſaid ſum of L. of liquidated penalty, and whole bygone annual rents due on the ſaid principal ſum ſince the term of Whitſunday , (all former annual rents having been paid up), and in time coming during the not payment; BUT ALSO IN, and TO, the ſaid bond itſelf, whole tenor and contents thereof, with all that has followed, or is competent to follow thereupon, SURROGATING and SUBSTITUTING the ſaid , and his foreſaids, in my full right and place of the premiſſes, with power to them to aſk and receive the ſums of money, principal, intereſt, and penalty, hereby aſſigned, and upon payment, to grant diſcharges or conveyances thereof, either in whole or in part; AND GENERALLY to do every other thing in relation to the premiſſes that I might have done myſelf before granting hereof.

XVII.

TRANSLATION.

THEREFORE, I have TRANSFERRED and MADE OVER, as I hereby TRANSFER, CONVEY, and MAKE OVER to, and in favour

of the ſaid , his heirs, executors, and aſſignees, the foreſaid ſum of L. Sterling of principal, L. Sterling of liquidate penalty, with the legal intereſt of the ſaid principal ſum ſince the term of , and in time coming during the not payment thereof, all contained in, and due by the bond above narrated; TOGETHER WITH the ſaid bond and aſſignation thereof, in my favour above-mentioned, themſelves, whole tenor, and contents thereof, with all that has followed, or may follow thereupon, ſurrogating and ſubſtituting the ſaid , &c. (*this clauſe goes on preciſely as in No* xiii.)

XVIII.

DISCHARGE of the MOVEABLE BOND.

THEREFORE I have EXONERED and DISCHARGED, as I hereby (not only) EXONER, ACQUIT, and ſimpliciter DISCHARGE, the ſaid , his heirs, executors, and ſucceſſors, of the ſaid principal ſum of L. Sterling, and of the intereſt due thereon, with the ſum of L. of liquidate penalty, and the termly failures, all contained in, and due by the ſaid bond; together with the ſaid bond itſelf, whole clauſes, tenor and contents of the ſame, with all action, diligence, and execution competent, or that may be competent thereon, for ever.

XIX.

DISPOSITION of an HERITABLE BOND.

The firſt part of this diſcharge proceeds preciſely in the ſame terms with No xviii., *and then you go on in theſe terms:* BUT ALSO, have RENOUNCED and OVERGIVEN, as I hereby RENOUNCE and OVERGIVE, to and in favours of the ſaid , and his heirs and ſucceſſors, not only the foreſaid annualrent of L. Sterling, being the annualrent correſponding to the ſaid principal ſum of L. Sterling, upliftable at the terms, and by the proportions foreſaid, forth of the lands and others above written, BUT ALSO, the ſaid whole lands and others, with the pertinents lying, and deſcribed as aforeſaid themſelves, with the ſaid heritable bond and inſtrument of ſaſine following there-

on in favour of the ſaid ; AND I WILL and GRANT the foreſaid annualrent of L. Sterling, to have been duly and lawfully redeemed from me, my heirs, and ſucceſſors; AND I CONFESS and DECLARE the ſaid lands and others foreſaid, out of which the ſaid annuity was demandable, to be looſed and diſburdened thereof, and of the infeftment above mentioned in all time coming; and FURTHER, I have RENOUNCED and RELEASED, as I hereby RENOUNCE, and for ever RELEASE, the foreſaid lands and others, with the pertinents thereof, all lying and deſcribed as ſaid is, together with all right, title, and intereſt which I, my predeceſſors, and authors, or heirs and ſucceſſors had, have, or could pretend thereto, or to any part or portion thereof, in virtue of the original heritable bond and infeftment following thereon above mentioned; AND THAT to and in favour of the ſaid , his heirs, and ſucceſſors in the ſaid lands, to be by them enjoyed and poſſeſſed, free and diſburdened of the ſaid heritable ſecurities in all time coming, the ſame being now and for ever EXTINGUISHED.

XX.

NOMINATION of an EXECUTOR.

1. *Where the Office only is Given.*

I , in order to ſettle my affairs, DO hereby MAKE, CONSTITUTE, and APPOINT , to be my ſole executor, adminiſtrator, and intromitter with the whole moveable and perſonal eſtate that ſhall belong to me at the time of my death, WITH full power to him to intromit with my whole moveables and executry of every deſcription; to give up inventaries thereof; to confirm the ſame; and generally to do every thing in the premiſſes competent to an executor; DECLARING ALWAYS that the ſaid ſhall be accountable to my neareſt of kin for his intromiſſions in virtue hereof.

2. *Where the Executor is to have the Property of the Executry.*

I , do hereby MAKE, CONSTITUTE, and APPOINT , to be my ſole executor and UNIVERSAL LEGATORY,

with full power to intromit with my whole moveables and executry of every deſcription; TO GIVE up inventaries thereof; to confirm the ſame; and GENERALLY to do every thing in the premiſſes competent to an executor.

XXI.

DISPOSITION of MOVEABLES.

I , hereby ASSIGN and DISPONE, to and in favour of , his heirs, executors, and aſſignees, all the corns, cattle, horſes, and implements of huſbandry on my farm of , ſituated in the ſhire of , all as contained in an inventary thereof, hereto ſubjoined, and ſigned by me as relative hereto; and I DECLARE that I hold the ſaid effects IN TRUST for the ſaid , to be delivered up to him on demand; AND if I ſhall ſell any part of the ſaid effects, I hereby OBLIGE me to account for the ſame, WITH FULL power to the ſaid to intromit with, and diſpoſe of the ſaid ſubjects, without any other warrant than this aſſignation.

OBLIGATORY CLAUSES.

The obligatory clauſe of the bond, like the diſpoſitive clauſe, contains a deſcription of the debtor; the ſum and the conditions of the deed; it alſo expreſſes the term of payment, the penalty in caſe of failure, and the period from which the intereſt is to run.

No I.

MOVEABLE BOND.—HERITABLE BOND.

"Which ſum of L. Sterling, I bind and oblige me, my heirs, and ſucceſſors, to repay to the ſaid , or to his heirs, executors, or aſſignees, at the term of Martinmas next, with the ſum of L. Sterling of liquidated penalty in caſe

of failure, and the legal intereſt of the ſaid principal ſum, from the date hereof to the ſaid term of payment, and thereafter, as long as the ſaid principal ſum ſhall remain unpaid." (*This is the clauſe in the moveable bond, and the obligatory clauſe in the heritable bond differs from it only by the following addition*), And that at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid annualrent on the term of Martinmas next, for what ſhall be due from the date hereof to that term; and the next term's payment of the ſaid annualrent at the term of Whitſunday , for the half year immediately preceding that term; and ſo forth at the ſaid two terms of Whitſunday and Martinmas yearly thereafter, by equal portions, during the not payment of the ſaid principal ſum, with L. Sterling of liquidate penalty, for each term's failure in payment of the ſaid annualrent, at the term above mentioned.

II.

BOND of CORROBORATION.

THEREFORE I have become BOUND and OBLIGED, as I hereby, IN CORROBORATION of the original bond above narrated, and without prejudice thereto, or to any diligence that has, or may follow thereon, *ſed accumulando jura juribus*, BIND and OBLIGE me, &c. (*as in the common bond*).

III.

BOND of PROVISION.

BIND and OBLIGE me, my heirs, executors, and ſucceſſors, to make payment to the ſaid B., his heirs, executors, and aſſignees, of the ſum of L. Sterling, and that at the firſt Whitſunday or Martinmas after my death, with L. Sterling of liquidate penalty in caſe of failure, and legal intereſt of the ſaid principal ſum, from the ſaid term of payment, yearly and termly thereafter, during the not payment of the ſame.

IV.

LEASE for PAYMENT of RENT.

For which cauſes, and on the other part, the ſaid B. binds and obliges himſelf, his heirs, executors, and ſucceſſors whomſoever, to pay to the ſaid A., his heirs and aſſignees, the ſum of L. Sterling of yearly rent, for the ſubjects hereby ſet at Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment of the ſaid rent at Whitſunday , and the next term's payment at Martinmas thereafter, for crop and year ; and ſo forth yearly and termly during the currency of this leaſe, with a fifth part more of each term's rent of liquidated expences in caſe of failure, and the legal intereſt of each term's rent, from and after the reſpective terms of payment, during the not payment of the ſame; and alſo to deliver yearly to the miniſter of the pariſh of , the proportion of victual ſtipend payable to him from the ſubjects hereby let; the ſaid A. giving a diſcount to the ſaid tenant and his foreſaids, out of the rent above ſpecified, for the quantity of victual ſo delivered, according to the fiars of the county; and further, to pay the proportion of ſchoolmaſter's ſalary and ground officer's dues, payable from the lands hereby ſet.

V.

OBLIGATION to REMOVE.

AND FURTHER, the ſaid BINDS and OBLIGES him and his foreſaids, to remove with their ſervants and ſtocking, from the poſſeſſion of the ſubjects hereby let, at the expiration of this leaſe, and that without any previous warning or proceſs of removing.

VI.

OBLIGATION to IMPLEMENT MUTUALLY.

AND LASTLY, both parties BIND and OBLIGE themſelves, and their foreſaids, to implement their reſpective parts of the premiſſes to each other, under the penalty of L. Sterling, to be paid by the party failing to the party obſerving,

or willing to obſerve the ſame, and that over and above performance.

VII.

OBLIGATION to PAY LEGACIES.

Under the burden of the following legacies, payable againſt the firſt term of Whitſunday or Martinmas after my death, with intereſt thereof from that term during the not payment thereof, viz. to D., the ſum of L. 100 Sterling, (*and ſo on*); to H., the whole ſilver-plate that ſhall belong to me at the time of my death, and which ſhall be delivered to him within days after my death, (*and ſo on whatever ſums or articles the teſtator may have to diſpoſe of.*)

QUÆQUIDEM.

The quæquidem is a clauſe in the charter which points out the connection betwixt the former and preſent vaſſal, and ſhows whether the right has been properly deduced. It is thus a uſeful clauſe, as it connects the deeds in a progreſs, and explains the nature of the title. 1. It ſtates the title in the vaſſal, on whoſe procuratory the reſignation has been made. 2. It ſhows in what manner the new vaſſal has a right to uſe that procuratory. 3. It ſtates the reſignation to have been made. And laſtly, it refers to the notorial inſtrument taken on the act of reſignation, in evidence of the fact; or, as in the charter of adjudication, it explains the authority under which the ſuperior acts.

No I.

CHARTER of RESIGNATION.

WHICH lands and others formerly pertained to A., holden by him of me, as immediate lawful ſuperior thereof, and were by him ſold and diſponed to B., by a diſpoſition

bearing date , and in virtue of the procuratory of reſignation therein contained, were, with all right, title, and intereſt, which the ſaid A. had, or any wiſe might have, claim, or pretend thereto, duly and lawfully reſigned in my hands, as immediate lawful ſuperior thereof, purely and ſimply, by ſtaff and baton, as uſe is, in favour and for new infeftment of the ſame, to be made and granted to the ſaid B., his heirs and aſſignees, heritably and irredeemably, in due and competent form as effeirs; as authentic inſtruments taken on the ſaid reſignation, in the hands of notary public, of the date hereof, more fully bear.

II.

CHARTER of ADJUDICATION.

WHICH lands and others foreſaid pertained heritably before to A., holden by him of me and my ſucceſſors, as immediate lawful ſuperiors thereof; and were, with all the rights and ſecurities thereof, by virtue of a decree of adjudication, obtained at the inſtance of B., before the Lords of Council and Seſſion, on the day of , duly and lawfully adjudged from the ſaid A., and decerned and declared to pertain and belong to the ſaid B., and his foreſaids, heritably, but redeemably as above mentioned; on payment and ſatisfaction to him of the ſum of L. *ſalvo juſto calculo*, and intereſt thereof, from the date of the ſaid decree, during the not redemption; and that over and above the compoſition to the ſuperiors, and expences of infeftment, the abbreviate of which decree of adjudication is duly recorded

TENENDAS.

This clauſe merely expreſſes the holding of the charter.

No I.

OF the FEU-CHARTER.

To be HOLDEN and to hold, all and ſundry, the lands and others above diſponed, by the ſaid and his foreſaids, of and under me, my heirs, and ſucceſſors whomſoever, as immediate lawful ſuperiors of the ſame, in feu farm, fee, and heritage for ever, by all the righteous meaths and marches thereof, as the ſame ly, in length and breadth, and with the houſes, biggings, &c. freely, quietly, well, and in peace, without any revocation or obſtacle whatever.

II.

OF the BLANCH CHARTER.

To be HOLDEN and to hold, all and ſundry, the lands and others above ſpecified, by the ſaid and his foreſaids, of, and under me and my foreſaids, lawful ſuperiors thereof, in blanch farm, fee, and heritage for ever, by all the righteous meaths, &c. (*as in No* 1.)

REDDENDO.

This clauſe ſpecifies the ſervices payable to the ſuperior. It contains, 1. The amount of the feu-duty. 2. The terms of payment, and the commencement of it. 3. A regulation relative to the relief payable by heirs and ſucceſſors. And laſtly, there is ſometimes added an aſtriction to the ſuperior's mill.

I.

FEU CHARTER.

GIVING therefore yearly the ſaid , and his foreſaids, for the lands and others above diſponed to me and my foreſaids, immediate lawful ſuperiors of the ſame, the ſum of

Sterling, in name of feu farm-duty, at two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's payment thereof at Whitſunday next, for the half year preceding, and ſo forth yearly thereafter, at the ſaid two terms in the year, in all time coming, and doubling the ſaid feu-duty the firſt year's entry of each heir, (or of each heir and ſingular ſucceſſor,) to the lands and others foreſaid; and that for all other burden, exaction, demand, or ſecular ſervice whatever, which can be any ways exacted for the lands and others foreſaid, or any part thereof in all time coming.

II.

BLANCH CHARTER.

Paying therefore yearly the ſaid , and his foreſaids, to me, my heirs and ſucceſſors, for the lands and others above ſpecified, the ſum of one penny Scots, in name of blanch farm, at Whitſunday yearly, on the grounds of the ſaid lands, if aſked only; and that for all other burden, exaction, demand, or ſecular ſervice, which can any ways be demanded forth of the lands and others foreſaid.

CLAUSE OF WARRANDICE.

The Clauſe of Warrandice is not a very material clauſe, in this reſpect, that independently of it altogether, the law itſelf would ſecure indemnification, in caſe of eviction; and, here it will be proper for the ſtudent to compare what is ſtated by Mr Erſkine on this ſubject, with the clauſes which are intended to give effect to that principle of law. Where the warrandice is real, it is conſtituted, not ſimply by a clauſe of warrandice, but the lands enter the diſpoſitive clauſe of the

deed, in warrandice of the principal lands; and of this there is an example amongſt the diſpoſitions to a purchaſer, Diſpoſitive Clauſe, No 8.

I.

ABSOLUTE WARRANDICE.

WHICH LANDS and others, with this charter, (or with this diſpoſition), and the infeftment to follow hereon, (or "which leaſe," or "which diſcharge,") I BIND and OBLIGE me and my foreſaids, to WARRANT to the ſaid , and his foreſaids, at all hands, and againſt all deadly, as law will. In the end of this clauſe in the diſpoſition to a purchaſer, there is an obligation to relieve him of the ceſs, up to a certain period; and of the feu-duties, miniſter's ſtipend, ſchoolmaſter's ſalary, and other public and parochial burdens, to a certain term, the purchaſer relieving the ſeller of the ſame in future. Sometimes it may happen, that there are feu-rights to be excepted from the warrandice, thus: "Excepting from the ſaid warrandice, the feu-rights of the ſaid lands, granted, &c:"

II.

FROM FACT and DEED.

WHICH ASSIGNATION, (or whatever the right may be), I BIND and OBLIGE me, my heirs and ſucceſſors whomſoever, to WARRANT to the ſaid , and his foreſaids, from all facts and deeds done, or to be done, by me, or my foreſaids, in prejudice thereof.

SALVO JURE CUJUSLIBET.

I.

SAVING and RESERVING the bygone and reſerved feu-duties of the ſaid lands, in ſo far as the ſame are not paid; AND SAVING my right, and the rights of all others concerned.

THE Obligation to Infeft, was introduced at a time when procuratories of reſignation and precepts of ſaſine fell by the death of the granter, and was intended to give the perſon receiving the right, an action againſt the heirs of the granter, for renewing the procuratories and precepts on which a title might be obtained. This clauſe expreſſes the manner of holding. In the diſpoſition to a purchaſer, there is a double holding, *a me*, or *de me*, optional to the purchaſer; and as this enters deeply into the completing of titles, it ought to be well underſtood; and, I hope, I ſhall be forgiven for referring, on this occaſion, to the Firſt Volume of the Syſtem of Styles, p. 112. and p. 193.

I.

IN the DISPOSITION to a PURCHASER.

1. *Where the Seller is Infeft.*—2. *Where he is Uninfeft.*

IN WHICH LANDS and others foreſaid, I BIND and OBLIGE me, my heirs, and ſucceſſors, to INFEFT and SEISE the ſaid and his foreſaids, upon their own expence, by two ſeveral infeftments and manners of holding, one thereof to be holden of me and my foreſaids, in free blanch, for payment of a penny Scots, in name of blanch duty, at Whitſunday yearly, if aſked only, and relieving me and my heirs, of the duties and ſervices payable to our ſuperiors thereof; and the other of the ſaid infeftments to be holden from me, of my immediate lawful ſuperiors thereof, in the ſame manner that I or my authors hold, or might have holden, the ſame ourſelves, and that either by reſignation or confirmation or both, the one without prejudice to the other. (*Where the diſponer has not completed his*

title, this clauſe is preceded by the following obligation). In which lands, I bind and oblige me, to procure myſelf, on my own expence, duly and lawfully ſerved and retoured heir to my ſaid father, and infeft and ſeiſed in the ſaid lands, in due and competent form; and, being thus veſted in the complete feudal right of the ſaid ſubjects, I further bind myſelf, my heirs and ſucceſſors, to infeft and ſeiſe, (*as above.*)

II.

IN the HERITABLE BOND.

AND for the ſaid , and his foreſaids, their FURTHER SECURITY and more CERTAIN PAYMENT of the foreſaid ſums of money, I BIND and OBLIGE me, my heirs and ſucceſſors, upon our own expence, duly and lawfully to infeft and ſeiſe the ſaid and his foreſaids, heritably, but under redemption, in manner after-mentioned, NOT ONLY in ALL and WHOLE, an annualrent of L. Sterling, or ſuch an annualrent, leſs or more, as ſhall by law, for the time, correſpond to the foreſaid principal ſum of L. Sterling, to be uplifted and taken at the ſaid two terms in the year, Whitſunday and Martinmas, by equal portions, beginning the firſt term's uplifting thereof at the term of Martinmas , for what ſhall then have fallen due from the date hereof to that time, and the next term's uplifting at the term of Whitſunday thereafter, and ſo forth yearly and termly during the not redemption, with a ſixth part more of each term's annualrent of liquidate penalty for each term's failure, FORTH of ALL and WHOLE, (*here the lands are particularly deſcribed*), lying within the pariſh of , and ſhire of , or forth of any part or portion of the ſeveral lands and others before ſpecified, and of the firſt and readieſt of the rents and profits of the ſame; BUT ALSO, IN ALL and WHOLE, the ſaid lands and others themſelves, in further ſecurity to the ſaid , and his foreſaids, of the payment of the ſums of money, principal, annualrents, liquidate expence, and termly failures abovementioned; AND THAT by two ſeveral infeſtments and manners of holding, the one thereof as well with reſpect to the infeſtment of annualrent, as to that of

property in ſecurity, to be holden of me and my foreſaids, in free blanch, for payment of a penny, Scots money, upon the grounds of the ſaid lands, at the term of Whitſunday yearly, if aſked only; and the other of the ſaid infeftments, TO BE HOLDEN from me and my foreſaids, of our immediate lawful ſuperiors of the ſaid lands, in manner following, viz. the infeftment of annualrent in free blanch, for payment of a penny, Scots money, on the grounds of the ſaid lands at the term of Whitſunday yearly, if aſked only; and the infeftment of property in ſecurity, by the ſame tenure, and as fully and freely in all reſpects, as I or my foreſaids hold, or might hold, the ſame ourſelves, and that either by reſignation or confirmation, or both, the one without prejudice to the other.

III.

IN the DISPOSITION to the HERITABLE BOND:

IN WHICH ANNUALRENT and LANDS, and others above conveyed in ſecurity, as ſaid is, I BIND and OBLIGE me, my heirs and ſucceſſors, to infeft and ſeiſe the ſaid , and his foreſaids, upon their own expence, AND THAT by two ſeveral infeftments and manners of holding, THE ONE THEREOF, (*as in the preceding, No* ii.)

IV.

IN the CONTRACT of EXCAMBION.

AND BOTH the ſaid parties BIND and OBLIGE themſelves, and their reſpective heirs and ſucceſſors, on their mutual expences, to INFEFT and SEISE each other, and their foreſaids, in the lands and others above diſponed reſpectively, and that by two ſeveral infeftments and manners of holding, ONE thereof to be holden of the diſponer, and his above written, in free blanch, for payment of a penny, Scots money, on the grounds of the ſaid lands, at the term of Whitſunday yearly, if aſked only, and relieving the diſponer and his foreſaids of the duties and ſervices payable to their ſuperiors; AND, the OTHER of theſe infeftments, to be holden of the ſaid , and , their reſpective immediate lawful ſuperiors thereof, by the

ſame tenure, and as freely as they hold their reſpective properties themſelves; AND THAT either by reſignation or confirmation, or both, the one without prejudice to the other.

V.

IN the DISPOSITION of BURGAGE SUBJECTS.

AND I BIND and OBLIGE me, my heirs, and ſucceſſors, to INFEFT and SEISE, on their own proper expence, the ſaid or his foreſaids, in the houſe, cellar, and pertinents, above diſponed, TO BE HOLDEN of his MAJESTY in free burgage, for ſervices of borough, uſed and wont.

VI.

GENERAL DISPOSITION.

FURTHER, I do hereby BIND and OBLIGE me, and my heirs and ſucceſſors, to infeft and ſeize the ſaid , and his heirs and aſſignees, in the whole lands and heritages above diſponed, requiring infeftment to be holden either *a me* or *de me*; AND for that purpoſe, to make, grant, ſubſcribe, and deliver to the ſaid , and his foreſaids, all neceſſary deeds, with procuratories of reſignation and precepts of ſaſine, and all clauſes neceſſary for fully veſting the premiſſes in their perſons.

PROCURATORY OF RESIGNATION.

It is under authority of this clauſe that reſignation is made in the hands of the ſuperior, either for the purpoſe of his giving out a new right to a purchaſer, or diſponee, or for the purpoſe of conſolidating the property and ſuperiority into one eſtate.

This clauſe is in the form of a mandate, empowering a procurator to appear for the perſon reſigning, in preſence of the ſuperior, or of his commiſſioners, and then to reſign for the purpoſe ex-

preſſed in the deed. It was this form of the clauſe which made it fall by the death of the granter, or of the receiver; and, it remained in that precarious ſtate, until, by the act 1693. c. 36., it was declared to continue in force after the death of the parties, and it may now be executed at any time. This clauſe directs in what manner the procurator is to conduct himſelf; it gives him the ſame power to make reſignation, which the granter himſelf poſſeſſed; and it cloſes with a ratification of whatever ſhall be lawfully done by the procurator appointed.

Beſides the forms in which this clauſe is expreſſed, it will be proper for the ſtudent to compare the procuratory of reſignation *in favorum*, with the procuratory of reſignation *ad remanentiam*, and to obſerve, in what the difference betwixt the two conſiſts.

I.

PROCURATORY of RESIGNATION in the DISPOSITION.

And, for completing the ſaid infeftment by reſignation, I hereby MAKE and CONSTITUTE , jointly and ſeverally, to be my lawful and irrevocable procurators, for me, and in my name, to appear before my immediate lawful ſuperiors of the lands and others foreſaid, or before their commiſſioners, having power to receive reſignation, and thereupon to grant new infeftments; and there duly and lawfully, by ſtaff or baton, as uſe is, to RESIGN and SURRENDER, as I, by theſe preſents, RESIGN, SURRENDER, *ſimpliciter* UPGIVE, OVERGIVE, and DELIVER, ALL and WHOLE, (1.) The lands and others deſcribed in the diſpoſitive clauſe hereof, with all right, title, intereſt, claim of right, property, and poſſeſſion, which I, my predeceſſors and authors, heirs,

and ſucceſſors, had, have, or can pretend thereto, in the hands of, (2.) my ſaid ſuperiors, or of their commiſſioners foreſaid, IN FAVOUR, and for NEW INFEFTMENT of the ſame, to be made and granted to the ſaid and his foreſaids, heritably and irredeemably, in due and competent form; ACTS, inſtruments, and documents thereupon to TAKE, and generally every other thing in the premiſſes to do, which I could have done myſelf, or which to the office of procuratory in ſuch caſes is known to belong, RATIFYING hereby and CONFIRMING whatever my ſaid procurators ſhall lawfully do, or cauſe to be done, in the premiſſes.

II.

IN the DISPOSITION and ASSIGNATION.

AND for that purpoſe, I hereby BIND and OBLIGE myſelf, and my foreſaids, to make, ſubſcribe, and deliver to the ſaid , and his foreſaids, all neceſſary deeds; WHICH LANDS and others I oblige, &c. (*clauſe of abſolute warrandice*); AND FURTHER, I hereby MAKE and CONSTITUTE the ſaid , and his foreſaids, my ceſſioners and aſſignees, NOT ONLY IN and TO the whole writs and evidents, titles and ſecurities of the ſaid lands, granted to me, my authors and predeceſſors, with all that has or may follow thereon, BUT without prejudice to the ſaid generality, IN and TO a diſpoſition of the ſaid lands and others, of date , granted by to me, with the procuratory of reſignation, and precept of ſaſine, therein contained; that in virtue thereof, and of the procuratory of reſignation, or precept of ſaſine, therein contained, and hitherto unexecuted, the ſaid may be infeft and ſeized in the whole ſubjects above diſponed.

III.

IN THE DISPOSITION,

Where the Seller's Title has not been completed.

And for the purpoſe of expeding my ſaid ſervice, and obtaining me infeft in the ſaid ſubjects, and for completing the ſaid infeftment in favour of the ſaid by reſignation,

I hereby make and conſtitute
, jointly and ſeverally, to be my lawful and irrevocable procurators, with full power to them to purchaſe brieves, and to obtain me ſerved heir to my ſaid father, to retour the ſaid ſervice, and thereupon raiſe precepts, and obtain me infeft in the ſaid lands, and to take every other ſtep neceſſary for veſting in my perſon, by infeftment, the complete feudal right of the lands and others above diſponed; and further, with power to compear before my lawful ſuperiors, &c. (*as in No* 1.)

IV.

IN the DISPOSITION by a VASSAL to his SUPERIOR.

Where the diſpoſition is granted by a vaſſal to his ſuperior, the following change will take place in the procuratory of reſignation; and, in place of what follows in the preceding form after (2.), *you will proceed in thoſe terms.* In the hands of the ſaid (*the diſponee*), or of his commiſſioners in his name, as in his own hands, and for his own behoof, *ad perpetuam remanentiam*, to the effect that the right of property in the ſaid lands, ſtanding in my perſon, may be incorporated and conſolidated with the right of ſuperiority thereof, in the perſon of the ſaid , and his heirs and ſucceſſors, in the ſaid ſuperiority, abſolutely and irredeemably, in all time coming, acts, inſtruments, and documents, &c. (*as above.*)

V.

PROCURATORY of RESIGNATION, *ad remanentiam.*

I hereby MAKE, CONSTITUTE, and ORDAIN
, jointly and ſeverally, to be my lawful and irrevocable procurators, for me, and in my name, to compear before myſelf, my heirs, or ſucceſſors, as immediate lawful ſuperiors of the lands and others before and after ſpecified, or before our commiſſioners, in our name, having power to receive reſignation thereof, *ad remanentiam*, and there duly and lawfully, by ſtaff and baton, as uſe is, to RESIGN and SURRENDER, as I, the ſaid , do hereby RESIGN and

SURRENDER *ſimpliciter*, UPGIVE, OVERGIVE, and DELIVER ALL and WHOLE (*here deſcribe the lands*), together with all right, title, and intereſt, which I have, or can pretend to the ſame, IN the hands of me, the ſaid , or of my foreſaids, as immediate lawful ſuperiors of the ſame, *ad perpetuum remanentiam*, (*as in the laſt example.*)

VI.

IN the HERITABLE BOND.

And for completing the ſaid infeftment by reſignation (*as in No* 1., *till you come to* (1.) *then ſay*,) not only all and whole an annualrent of L. ſterling, or ſuch an annualrent, leſs or more, as by law for the time ſhall correſpond to the foreſaid principal ſum of L. , to be uplifted and taken at the terms, by the proportions, and under the penalties before expreſſed; furth of all and whole the lands and others above mentioned, all lying and deſcribed as aforeſaid; or furth of any part or portion of the ſame; in ſecurity as aforeſaid, in the hands of my ſaid ſuperiors, or of their commiſſioners having power in manner foreſaid, in favour, and for new infeftments of the ſame, to be made and granted to the ſaid , and his foreſaids, heritably, but redeemably, always, in terms of the clauſe of redemption after ſpecified, acts, inſtruments, &c. as in No 1. *It is now very common in this deed, in place of a procuratory of reſignation to ſay*, "And for "that purpoſe, to grant all neceſſary deeds, with procuratories "of reſignation, and precepts of ſaſine, when required."

VII.

IN the CONTRACT of EXCAMBION.

AND for completing the ſaid infeftments by regiſtration, the ſaid A. and B. MAKE and CONSTITUTE , jointly and ſeverally, to be their procurators, for them, and in their names, to RESIGN and SURRENDER, as they hereby interchangeably RESIGN, and SURRENDER, as follows, viz. The ſaid A., in the firſt place, RESIGNS, SURRENDERS, and OVERGIVES ALL and WHOLE the ſaid lands of

, and others, as the ſame are deſcribed in A.'s part of the diſpoſitive clauſe hereof, in the hands of his immediate lawful ſuperiors, or of their commiſſioners having power to receive reſignations IN FAVOUR, and for new infeftments of the ſame, to be made and granted to the ſaid B., and his foreſaids, in due and competent form as effeirs; AS, ON THE OTHER HAND, the ſaid B. RESIGNS and SURRENDERS, and OVERGIVES ALL and WHOLE the lands of , and others foreſaid, as the ſame are deſcribed in B.'s part of the diſpoſitive clauſe hereof, IN the hands of his immediate lawful ſuperiors thereof, or of their commiſſioners having power to receive reſignations, IN FAVOUR, and for new infeftments of the ſame to be MADE, GIVEN and GRANTED to the ſaid A., and his foreſaids, in due and competent form as effeirs; AND PROVIDING ALWAYS, that if the property belonging to either of the parties ſhall, in whole or in part, be evicted, then, and in that caſe, this contract, and all that may have followed hereon, ſhall thereby become void and null, AND it ſhall be inſtantly competent to the party from whom the lands ſhall have been ſo evicted, to reenter into the poſſeſſion of the lands herein by him conveyed; ACTS, INSTRUMENTS, &c. (*in common form.*)

VIII.

IN a DISPOSITION of BURGAGE PROPERTY.

AND for completing that infeftment, I MAKE and CONSTITUTE

, jointly and ſeverally, to be my lawful and irrevocable procurators, for me, and in my name, to RESIGN, as I hereby RESIGN, SURRENDER, UPGIVE, OVERGIVE, and DELIVER, ALL and WHOLE the ſaid dwelling-houſe, with the cellar and pertinents above-diſponed, all lying, bounded, and deſcribed, in manner foreſaid; together with all right, title, intereſt, claim of right, property, or poſſeſſion, which I, my predeceſſors, and authors, had, have, or any wiſe can have thereto, IN the HANDS of the lord provoſt, or of any of the bailies of the borough of , for the time, as in the hands of his MAJESTY, immediate lawful ſuperior thereof, IN FAVOUR,

and for new infeftment of the ſame, to be made, given, and granted to the ſaid , and his foreſaids, heritably and irredeemably, in due and competent form as effeirs, ACTS, INSTRUMENTS, &c. (*as before.*)

ASSIGNATION TO WRITS AND RENTS, &c.

IN giving theſe clauſes, I ſhall, in the firſt example, join to them the clauſe of warrandice of the aſſignation, becauſe, in the deeds in which they are inſerted, they are never ſeparated. The aſſignation of the rents expreſſes from what period the purchaſer has a right to the rents; and, in the warrandice, you will find a diſtinction betwixt the warrandice of the writs and of the rents; the warrandice of the former is abſolute, that of the latter is from fact and deed only, which is the warrandice that practice has introduced in the conveyance of perſonal obligation, and grounds of debt.

I.

IN the DISPOSITION to a PURCHASER.

AND FURTHER I hereby MAKE and CONSTITUTE the ſaid , and his foreſaids, my ceſſioners and aſſignees, NOT ONLY IN and TO the whole writs and evidents, titles and ſecurities of the ſaid lands, granted to me, my authors, and predeceſſors, and the whole clauſes therein contained, with all that has followed, or that may be competent to follow thereon, BUT ALSO IN and TO the rents and profits of the ſaid lands, from and after the ſaid term of Whitſunday laſt, which is hereby declared to be the term of his entry to the ſaid ſubjects; and in all time coming, SURROGATING and SUBSTITUTING the ſaid , and his foreſaids, in my full right and place of the premiſſes for ever; WHICH ASSIGNATION

above written, I BIND and OBLIGE myſelf, and my foreſaids, to WARRANT as follows, viz. in ſo far as concerns the writs and evidents, at all hands, and againſt all mortal, and in ſo far as concerns the rents, from my own proper facts and deeds only.

II.

IN the ORIGINAL CHARTER.

AND FURTHER, I hereby ASSIGN, TRANSFER, and MAKE OVER to the ſaid , and his above-written, the rents and duties of the ſaid lands, from and after the term of Whitſunday , which is hereby declared to be the term of his entry thereto, and in all time coming, with power to purſue for, receive, and diſcharge the ſame; WHICH ASSIGNATION I BIND and OBLIGE me, and my foreſaids, to WARRANT from our own proper facts and deeds.

III.

HERITABLE BOND.—DISPOSITION in SECURITY.

AND FURTHER, I hereby MAKE and CONSTITUTE the ſaid , and his foreſaids, my lawful ceſſioners and aſſignees, not only in and to the whole writs, titles, and ſecurities of the ſaid lands, BUT ALSO IN and TO the whole rents and duties of the ſame, due and payable for this preſent crop and year , and for all crops and years in time coming, during the not-redemption; together with the leaſes of the ſaid lands, and all action, diligence, and execution competent to me thereon; SURROGATING and SUBSTITUTING the ſaid , and his foreſaids, in my full right and place of the premiſſes UNDER REVERSION, as ſaid is, for their SECURITY and PAYMENT of the ſums of money, principal, annualrent, penalty, and termly failures above written; WITH FULL POWER to him and his foreſaids to receive and diſcharge the rents and duties above aſſigned, and, if neceſſary, to charge and purſue therefor, and generally every thing in relation to the premiſſes, to do which I could have done myſelf before granting hereof; WHICH ASSIGNATION, &c. (*as in No* I.)

IV.

DISPOSITION of an HERITABLE BOND.

AND FURTHER, I hereby MAKE and CONSTITUTE the said C., and his foresaids, my cessioners and assignees, in and to the foresaid principal sum of L. , annualrent thereof from and since , and during the not-redemption, together with the liquidate penalty, and termly failures, above expressed, incurred or to be incurred, all contained in and due by the heritable bond above narrated; AND IN and TO the said heritable bond and instrument of sasine following thereon, in my favour, with the whole clauses and effect thereof, and all that has followed, or is competent to follow thereon, SURROGATING and SUBSTITUTING the said , and his foresaids, in my full right and place of the premisses; with power to him or them to pursue for the whole sums of money above assigned, and, on payment, to grant discharges, renunciations, or conveyances thereof, either in whole or in part, and generally to do every other thing in relation to the premisses that I could have done before granting hereof. *(This is followed by a clause of warrandice from fact and deed.)*

V.

IN the DISPOSITION to an HEIR.

AS ALSO, I hereby, under the burden foresaid, ASSIGN and DISPONE, to and in favour of the said , and his foresaids, the rents of the said lands and estate, with the whole title-deeds and securities thereof, and all action and execution competent thereon.

VI.

DISPOSITION of PATRONAGE.

AND I hereby MAKE and CONSTITUTE the said , and his foresaids, my lawful cessioners and assignees, IN and TO the writs and evidents of the said advocation, donation, and right of patronage, conceived in favour of me, my predecessors, and authors, in so far as regards the said right of patronage.

REGULATIONS RELATIVE TO ACCOUNTING, &c.

Commonly inſerted in the Heritable Security, when a Right of entering into Poſſeſſion is given to the Creditor.

I.

AND it is hereby expreſsly DECLARED, that in caſe the ſaid , or his foreſaids, ſhall at any time hereafter enter into poſſeſſion of the ſaid ſubjects, or ſhall, in virtue of the powers hereby given, uplift the rents of the ſaid ſubjects, or any part thereof, they ſhall be liable for their actual intromiſſions only, as the ſame ſhall be inſtructed by their writ or oath, and that after deducting what they ſhall have expended in recovering the ſaid rents, or ſhall have paid to factors, or in repairs, public burdens, and others, or in maintaining the poſſeſſion of the ſaid ſubjects in virtue hereof; and that they ſhall noways be liable for not doing diligence, nor for inſolvency of tenants, nor for omiſſions of any kind; and that they may relinquiſh and re-aſſume the ſaid poſſeſſion at pleaſure; AND I OBLIGE me, and my foreſaids, to ENTER and infeft the ſaid , and his foreſaids, vaſſals to us in the ſaid annualrents and lands in ſecurity, as aforeſaid, without any compoſition; AND I hereby ASSIGN and MAKE OVER to him and them, the non-entry relief, and other caſualties, that may fall during their non-entry.

CLAUSE OF DELIVERY OF WRITS.

IT is uſual, in this clauſe, to deſcribe the deeds delivered up, where they are few: where they are numerous, an inventory of them is made, a docquet is ſubjoined to the inventory, ſtating that it is an inventory of the writs and title deeds referred to, in a diſpoſition, &c. by ſuch a perſon to ſuch a perſon, of ſuch a date, and this is ſigned by the

granter of the deed; and the clauſe of delivery refers to that inventory and docquet.

I.

COMMON TO MOST DEEDS.

AND I have herewith DELIVERED UP to the ſaid an extract of, &c. (*here the deeds delivered up are deſcribed*), to be uſed by him and his foreſaids, as their own proper writs and evidents in all time coming, (*or if there has been an inventory made up of the titles, the clauſe will be thus expreſſed*), AND I have herewith DELIVERED UP to the ſaid the title-deeds of the ſaid ſubjects, as contained in an inventory thereof, ſubſcribed of this date, as relative hereto, (*or where the titles have not been delivered up, but an obligation given to make them furthcoming, it will be thus,*) AND WHEREAS the rights and title-deeds of the ſaid ſubjects contain otller ſubjects of greater value, and ſo are not delivered to the ſaid ; THEREFORE I OBLIGE me, and my foreſaids, to make the ſame FURTHCOMING to him, and his foreſaids, whenever he or they ſhall have uſe therefor, on his or their own receipt and obligation for re-delivery within a certain ſhort ſpace, and under a ſuitable penalty ; OR otherways, I OBLIGE me, and my foreſaids, to deliver to them judicial tranſumpts of the ſaid writs.

POWER OF REVOCATION, AND CLAUSE OF REVOCATION.

IN latter wills, the laſt in date is alone effectual: But in other ſettlements, which are executed in the form of deeds, *inter vivos*, and which have a clauſe diſpenſing with the delivery of the deed, there is no other way of getting clear of it, but by deſtroying the deed, or recalling it; and it is on this account that theſe deeds have always a clauſe, enabling the

granter to revoke or alter. The exercise of this power, in the clause of revocation, may be either simple, and then it can create no doubt; or it may be conditional, which renders the expressing of this clause a much more delicate business.

I.

A CLAUSE reserving a Power to REVOKE.

RESERVING always to myself full power and liberty, at any time of my life, and even on deathbed, to REVOKE, ALTER, or INNOVATE these presents, in whole or in part, as I shall think fit, (*when heritable property has been conveyed, there is added,* with power also to sell, or gratuitously to alienate and dispose of the lands and others foresaid, or to contract debt thereupon;) BUT DECLARING, that no revocation hereof shall be inferred by implication or construction, BUT only from an express revocation in writing, subscribed by me; AND in case of no such revocation in writing, then though these presents may be found lying in my own custody, or in the custody of any other person, undelivered at the time of my death, yet I hereby DISPENSE with the want of delivery, and DECLARE this deed to be equally good and effectual as if an actual and formal delivery had taken place, any law or practice to the contrary notwithstanding.

II.

A CLAUSE EXERCISING that POWER.

AND I hereby REVOKE and RECALL all former dispositions, assignations, or other deeds, in favour of whatever person, or persons, the same may have been granted, which can in any shape interfere with the purposes of this deed; AND I hereby DECLARE the same to be VOID and NULL, to all intents and purposes.

III.

A CONDITIONAL CLAUSE of REVOCATION.

AND in order to give validity to theſe preſents, I (in virtue of my reſerved powers,) DO hereby, but under the condition herein after expreſſed, REVOKE and RECALL all former ſettlements, and all deeds executed by me, that can interfere herewith, and in particular a deed, (*deſcribe it*); BUT under this expreſs CONDITION and DECLARATION, that if it ſhall ſo happen that theſe preſents ſhall be reduced, on any ground competent in law, or if, from any cauſe whatever, they ſhall prove ineffectual for conveying the ſubjects herein deſcribed to thoſe to whom they are hereby deſtined, THEN I hereby RECALL the above REVOCATION, and DECLARE, that the deeds falling under it ſhall remain in full force, in the ſame manner as if theſe preſents never had been granted, TO the EFFECT that my ſucceſſion may in no event be opened up to my heir at law.

DISPENSING WITH THE DELIVERY OF THE DEED.

THE clauſe, diſpenſing with the delivery, is neceſſary in all thoſe deeds which are executed as deeds, *inter vivos*, ſince delivery is neceſſary to ſuch deeds, as an indication of a complete and finiſhed deed on the part of the granter: But in all ſettlements of a man's affairs, actual delivery would neither be pleaſant, nor in all caſes convenient; and therefore, to reconcile the forms of our law to to the circumſtances of the caſe, and to enable the granter to retain the deed in his own hands, this clauſe has been introduced.

I.

COMMON TO SETTLEMENTS.

And I hereby diſpenſe with the delivery hereof, and declare theſe preſents to be effectual, though found lying by me at the time of my death, or in the cuſtody of any perſon to whom I may intruſt the ſame.

This clauſe is ſometimes made part of the power of revocation, of which you will will find an inſtance under the clauſe, "Power of Revocation," No 1.

REGISTRATION.

This is a clauſe, the hiſtory of which is extremely curious, and the effect of which on our conveyancing is of the greateſt importance. It is a mandate, or warrant of attorney, by which an attorney, or procurator, is named, with power to appear before a judge, and there to conſent that a decree of that judge ſhall go out preciſely in terms of the obligations come under by the conſtituent in the deed; and of old a decree was actually pronounced: At this day we have preſerved all the beneficial effects of the old form; and it now affords a warrant for diligence againſt the party, in the ſame way that a formal decree would do, at a very trifling expence, and with no delay of time. It alſo operates for the preſervation of a deed by inſerting it in a record, and by keeping the deed itſelf in ſafe cuſtody, while an extract, or copy, is given out, certified by the clerk of court. The object of the clauſe varies,

according to the nature of the deed; and, in a deed containing perſonal obligation, it provides for letters of horning, and other diligence of the law; while, in deeds containing no ſuch obligation, it provides merely for the preſervation of the deed.

I.

FOR DILIGENCE.

And I conſent to the regiſtration hereof in the books of Council and Seſſion, or other Judge's books competent, that letters of horning on ſix days charge, and all other execution neceſſary, may paſs on a decree to be interponed hereto, in common form; and for that purpoſe, I conſtitute

my procurators, &c.

II.

FOR PRESERVATION.

And I conſent to the regiſtration hereof in the books of Council and Seſſion, or other Judge's books competent, (*and when it is inſerted in a charter, ſay,* The books of Council and Seſſion, therein to remain, &c.) therein to remain for preſervation; and for that purpoſe conſtitute

my procurators, &c.

III.

FOR DILIGENCE OR PRESERVATION.

And I conſent to the regiſtration hereof in the books of Council and Seſſion, or other Judge's books competent, therein to remain for preſervation, and that letters of horning, and all other legal execution, may paſs, upon a decree to be interponed hereto, in common form; and for that purpoſe I conſtitute

my procurators, &c.

IV.

IN THE DISCHARGE AND RENUNCIATION.

And I conſent to the regiſtration hereof in the books of Council and Seſſion, or other Judge's books competent, that

all neceſſary execution may paſs, on a decree to be interponed hereto; and alſo in the general and particular regiſter of ſaſines, reverſions, &c. for publication; and for that purpoſe I conſtitute

my procurators, &c.

V.

IN MUTUAL CONTRACTS.

And both parties conſent to the regiſtration hereof in the books of Council and Seſſion, or other Judge's books competent, that letters of horning on ſix days charge, and all other execution neceſſary, may paſs, on a decree to be interponed hereto, in form as effeirs; and thereto they conſtitute their procurators, &c.

PRECEPT OF SASINE.

This clauſe, like the procuratory of reſignation, is in the form of a mandate, and fell alſo by the death of the granter or receiver, till, by the act of the legiſlature, it was, conſiſtently with the intention of the clauſe, preſerved in force after the death of the parties.

The precept of ſaſine was formerly a ſeparate deed altogether from the charter; and it was to prevent the multiplication of deeds, and ſecure it from accidents, that the legiſlature at laſt ordered it to be annexed to the charter; and, from that time, the precept of ſaſine is univerſally to be found immediately preceding the teſting clauſe.

After the nomination of the bailie, he is ordered to paſs to the grounds of the lands, and to give in-

ſeſtment to the vaſſal, or diſponee, of the lands contained in the charter, and that by delivering of certain ſymbols, according to the nature of the ſubjects to be conveyed; and it cloſes with committing to the bailie full power to execute his office.

When there are conditions in the deed, that are to form burdens and reſtrictions on the right, they muſt be inſerted in the precept: But it will be obſerved, that the mere inſerting of a condition in this clauſe does not neceſſarily render it real; it muſt be in itſelf properly expreſſed to produce that effect.

In ſtudying this clauſe, the ſtudent will naturally compare the precept in the charter with that in the common diſpoſition to a purchaſer, and the precept in the diſpoſition by which a right of property is conferred, with the precept in the heritable bond by which a right in ſecurity only is given. A due attention to theſe diſtinctions, and the hiſtory of them, is highly uſeful to the conveyancer.

I.

FEU CHARTER. BLENCH CHARTER.

AND FURTHER, I DESIRE and REQUIRE you, , jointly and ſeverally, my bailies in that part, hereby ſpecially conſtituted, THAT, on ſight hereof, ye paſs to the grounds of the ſaid lands, and there give and deliver to the ſaid , or his foreſaids, heritable, ſtate and ſaſine, real, actual, and corporal poſſeſſion, of ALL and WHOLE the lands and others contained in the diſpoſitive clauſe hereof, with the parts and pertinents thereto belonging, all lying and deſcribed in manner before

mentioned, TO be HOLDEN by them in manner foreſaid. (*In the precept of the feu charter, you add here,* And for payment of the feu-duties above ſpecified:) AND that by DELIVERING to the ſaid , or to his foreſaids, or to his or their certain attorney, or attornies, bearers hereof, of earth and ſtone of the ground of the ſaid lands, with all other ſymbols neceſſary, and this in noways ye leave undone; which to do I commit to you, jointly and ſeverally, my full power, by this my precept of ſaſine, directed to you for that effect.

II.
CHARTER of RESIGNATION.

And further, I hereby deſire and require you jointly and ſeverally, my bailies in that part hereby ſpecially conſtituted, THAT on ſight hereof, you GIVE and DELIVER to the ſaid , or his foreſaids, heritable STATE and SASINE, actual, real, and corporal poſſeſſion, of ALL and WHOLE the ſaid lands, and others above mentioned, lying and deſcribed in manner foreſaid, and here holden as repeated; AND THAT, by delivering to the ſaid , or his foreſaids, or to his or their certain attorney, in his or their names, bearers hereof, of earth and ſtone of the grounds of the ſaid lands, and others, with all neceſſary ſymbols; BUT SAVING ALWAYS and reſerving to me the bygone and current feu-duties, in ſo far as they have not been paid, AND SAVING my right, and and the right of all others concerned; AND THIS in nowiſe ye leave undone, WHICH TO DO, &c.

III.
CHARTER of ADJUDICATION.

The only alteration on the precept of ſaſine in the charter of adjudication, is, that you add after the ſymbols of infeftment, and before the words "BUT SAVING ALWAYS," "REDEEMABLY ALWAYS in terms of law."

IV.

PRECEPT of CLARE CONSTAT.

I A., SUPERIOR of the lands and others underwritten, to , jointly and severally, my bailies in that part, to the effect after specified, specially constituted, GREETING: BECAUSE by authentic instruments and documents produced and read, and considered by me, or others for me, IT CLEARLY APPEARS, that the deceased , father to MY LOVITE , bearer hereof, died last vested and seised, as of fee, at the faith and peace of our Sovereign Lord the King, in ALL and WHOLE, (*here describe the lands*). AND that the said , is nearest and lawful heir to the said , his father. (*It is material in this deed, to describe the vassal in his proper character, and precisely in the same manner as if the title were completed by a service, as an error in the character under which he receives his infestment, will be equally fatal to his title, as an error in the character under which an heir is served, would be to the service.*) In the foresaid lands and others, AND THAT he is of lawful age, AND THAT the said lands and others, are holden of me, and my heirs and successors, as immediate lawful superiors of the same, in feu farm, fee, and heritage, for the yearly payment, &c. (or in blanch farm, fee, and heritage, &c. *but these will be regulated by the holding and reddendo of the former title.*) and that for all other burden, exaction, demand, or secular service whatsoever; THEREFORE, it is my WILL, and I hereby DESIRE and REQUIRE you, jointly and severally, my bailies in that part foresaid, that on sight hereof, ye pass to the ground of the said lands and others, and there give heritable, state and sasine, with actual, real, and corporal possession of ALL and WHOLE, the said lands lying and described as aforesaid, to the said , as heir foresaid to the said ; and THAT by DELIVERING to him, or to his certain attorney or attornies in his name, bearers hereof, of earth and stone of the ground of the said lands, and all other symbols requisite and necessary, TO BE HOLDEN of me and my foresaids, in manner,

and for payment and performance of the duties and ſervices before ſpecified, AND this in nowiſe, ye leave undone; WHICH TO DO, &c.

V.

DISPOSITION to a PURCHASER.

AND FURTHER, I hereby DESIRE and REQUIRE you , jointly and ſeverally, my bailies in that part, hereby ſpecially conſtituted, that on ſight hereof, ye paſs to the grounds of the ſaid lands, reſpectively and ſucceſſively, after others, and there give and deliver to the ſaid , or his foreſaids, heritable ſtate and ſaſine, real, actual, and corporal poſſeſſion, of ALL and WHOLE the ſaid lands and others contained in the diſpoſitive clauſe hereof, lying and deſcribed as foreſaid; AND THAT by delivering to the ſaid , or to his foreſaids, or to his or their certain attorney or attornies, in his or their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols uſual and neceſſary, AND this in nowiſe ye leave undone; WHICH TO DO, &c.

VI.

DISPOSITION by a SUPERIOR to his VASSAL.

The difference in the precept of ſaſine of this deed, conſiſts in the following addition introduced immediately before theſe words: "AND this in nowiſe, &c." "TO BE HOLDEN of my immediate lawful ſuperior of the ſaid lands, by the ſame tenure, and for payment and performance of the ſame duties and ſervices that are payable by me and my foreſaids, and as freely as I hold the ſame myſelf."

VII.

DISPOSITION of TEINDS.

In this precept, the ſtyle is the ſame, till you come to the ſubjects, when you proceed thus: "POSSESSION of ALL and WHOLE, the teinds, parſonage and vicarage of the lands and

others above mentioned, lying and deſcribed in manner foreſaid, and here held as repeated; AND THAT by delivering to him or them, or to his or their certain attorney, or attornies, bearers hereof, of a handful of corn, graſs, or ſtubble, of the ground of the ſaid lands, as uſe is, but under the conditions above written, and to be holden in manner foreſaid; AND THIS in nowiſe, &c.

VIII.
CONTRACT of EXCAMBION.

AND FURTHER, the ſaid A. and B., do hereby deſire and require you , jointly and ſeverally, their bailies, to the effect after ſpecified, hereby ſpecially CONSTITUTED, that on ſight hereof, ye paſs to the grounds of the ſaid lands and others, as particularly deſcribed in the ſaid A.'s part of the diſpoſitive clauſe hereof, and there give and deliver to the ſaid B., or to his foreſaids, heritable ſtate and ſaſine, real, actual, and corporal poſſeſſion of the ſaid lands and others, and that by delivering to the ſaid B., or to his foreſaids, or to his or their attorney or attornies, in his or their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols uſual and neceſſary; AS ALSO, that ye paſs to the ground of the ſaid lands and others, as particularly deſcribed in the ſaid B.'s part of the diſpoſitive clauſe hereof, and there GIVE and DELIVER to the ſaid A., or to his foreſaids, heritable ſtate and ſaſine, real, actual, and corporal poſſeſſion of the ſaid lands and others; AND THAT by delivering to the ſaid A., or to his foreſaids, or to his or their certain attorney or attornies, in his or their names, bearers hereof, of earth and ſtone of the ground of the ſaid lands, and all other ſymbols uſual and neceſſary; which to do, the ſaid A. and B., reſpectively, COMMIT to you, and each of you, full power, by this precept of ſaſine, directed to you for that effect.

IX.

DISPOSITION, with REAL WARRANDICE.

The only difference occaſioned in this precept of ſaſine, from the precept No V., *is in the order on the bailie, which is thus expreſſed:* "to GIVE and DELIVER to the ſaid , and his foreſaids, heritable ſtate and ſaſine, real, actual, and corporal poſſeſſion, of ALL and WHOLE the ſaid lands of , and that as PRINCIPAL; and ALSO, of ALL and WHOLE the ſaid other lands of , and that in SPECIAL and REAL WARRANDICE of the ſaid principal lands, in manner and to the extent foreſaid, AND THAT by DELIVERING, &c.

X.

HERITABLE BOND.

AND I DESIRE and REQUIRE you , jointly and ſeverally, my bailies, in that part, to the effect after ſpecified, hereby ſpecially conſtituted, THAT on ſight hereof, ye paſs to the ground of the ſeveral lands above mentioned, reſpectively and ſucceſſively after others, AND there GIVE and DELIVER to the ſaid , or to his foreſaids, heritable ſtate and ſaſine, real, actual, and corporal poſſeſſion, NOT ONLY of ALL and WHOLE the foreſaid annualrent of L. , or of ſuch an annualrent, leſs or more, as ſhall correſpond by law for the time, to the ſaid principal ſum of L. , to be uplifted and taken at two terms in the year, Whitſunday and Martinmas, by equal portions, as before ſpecified, forth of all and whole the lands and others before deſcribed, or forth of any part or portion of the ſame; BUT ALSO, of ALL and WHOLE, the lands and others themſelves, with the pertinents, in REAL SECURITY, to the ſaid , of the before mentioned ſum of L. , annualrents thereof, liquidate penalties, and termly failures, if incurred; AND THAT, by delivering to the ſaid , or to his foreſaids, or to his or their attorney, in his or their names, bearers hereof, of earth and ſtone, of and upon the ground of the ſaid ſeveral lands, and a penny money for the ſaid annualrent, and all other ſymbols

uſual and neceſſary, TO BE HOLDEN in manner before mentioned; and which infeftment of annualrent, and infeftment of property in ſecurity, are hereby declared to be conſiſtent with each other; and to be uſed jointly or ſeparately by the ſaid , and his foreſaids, in their option; DECLARING ALWAYS, as it is hereby ſpecially PROVIDED and DECLARED, that the ſaid annualrent of L. , and lands and others before mentioned, out of which the ſame is upliftable, ſhall be redeemable by me the ſaid , and my foreſaids, or our aſſignees, from the ſaid , and his foreſaids, by payment to them, or lawful conſignation for their behoof, of the foreſaid principal ſum of L. , with the annualrents thereof, and the liquidate penalties and termly failures, reſting and incurred at the time; TOGETHER WITH the neceſſary charges that ſhall happen to be expended by the ſaid , and his foreſaids, in infefting, or otherwiſe ſecuring themſelves in the ſaid annualrent, and lands and others foreſaid, and that at and againſt the ſaid term of Martinmas next, or at any term of Martinmas or Whitſunday thereafter, on the term day, if lawful, and if not, on the firſt lawful day thereafter, on premonition always of 40 days, to be made by me and my foreſaids, to the ſaid , and his above written in preſence of a notary and witneſſes, the conſignation to be in the hands of the caſhier of the Royal Bank of Scotland for the time, on the riſk of the conſigner, and the place of redemption to be the office of the ſaid Royal Bank; DECLARING, that an extract or copy hereof, or of the ſaſine to follow hereon, ſhall be as effectual for uſing the ſaid order of redemption, as if a particular letter of reverſion were granted by the ſaid for that purpoſe; AND theſe things, &c.

XI.

DISPOSITION of a RIGHT in SECURITY.

AND FURTHER, I DESIRE and REQUIRE you , jointly and ſeverally, my bailies in that part, hereby ſpecially conſtituted, that on ſight hereof, ye paſs to the ground of the lands and others above diſponed, reſpective-

ly and ſucceſſively, one after the other, and there give and deliver heritable ſtate and ſaſine, with real, actual, and corporal poſſeſſion, to the ſaid , or to his foreſaids, of the whole lands and others foreſaid, and that in REAL SECURITY and for payment to him and his foreſaids, of the ſaid principal ſum of L. Sterling, with the penalty above mentioned, if incurred, and intereſt of the principal ſum, and termly failures, in caſe of not punctual payment of the ſaid intereſt, and of the expence of the infeftments to follow hereon, AND THAT by DELIVERY to the ſaid , or his or their foreſaids, or his or their attorney or attornies, in his or their names, bearers hereof, of earth and ſtone, of and upon the ground of the ſaid lands, and all other ſymbols uſual and neceſſary, as uſe is, to be holden, with warrandice, and under reverſion, and with and under the conditions, proviſions, and declarations above ſpecified, which muſt all be ſpecially enumerated in the infeftments to follow hereon; AND THIS in nowiſe, &c.

XII.

DISPOSITION of RIGHT of PATRONAGE.

And further, I deſire and require you , jointly and ſeverally, my bailies in that part, hereby ſpecially conſtituted, that on ſight hereof, ye paſs to the ſaid pariſh-church of , and there GIVE and DELIVER to the ſaid , and his foreſaids, heritable ſtate and ſaſine, actual, real, and corporal poſſeſſion, of all and whole, the ſaid advocation, donation, and right of patronage of the ſaid pariſh and pariſh-church of , AND THAT by delivery to him or them, or to his or their certain attorney or attornies, in his or their names, bearers hereof, the keys of the ſaid church, with a pſalm-book and other ſymbols uſual and neceſſary; AND THIS in nowiſe, &c.

IT is this clauſe, joined to the forms that our law has carefully provided for the execution of our deeds, which affords evidence, that a deed is truly the deed of the perſon who appears as granter of it. So well has this matter been provided for, that our law has been able to receive every deed, in which the regulations of ſtatute and of cuſtom have been obſerved, as good and ſufficient evidence; though it does not refuſe to admit of a proof of fraud, or of forgery, for overturning that evidence, yet until that proof is brought, the deed ſtands good.

No I.

IN WITNESS WHEREOF, theſe preſents, conſiſting of this and the preceding pages, written on ſtamped paper, by C. (*deſcribe him, that is, give his addition, or as we ſay, his deſignation, for inſtance*, C., writer in Edinburgh, *or* C. merchant in Edinburgh,) ARE SUBSCRIBED by me AT (*the place of ſubſcription*), the (*here the day, month, and year of God, will be inſerted in writing, and not in figures*), in preſence of theſe witneſſes, D., (*deſcribe him*), and E., (*deſcribe him.*)

The party ſubſcribes here.

The two witneſſes here, adding, after their names, the word witneſs.

II.

IN WITNESS WHEREOF, theſe preſents, conſiſting of this and the preceding pages, written on ſtamped paper, by , ARE SUBSCRIBED by me, AT , the day of , in preſence of theſe witneſſes, , and witneſſes alſo to my ſigning the marginal note, on the firſt page hereof, which marginal note was written by , five words on the firſt line of the ſecond page hereof, being deleted before ſubſcribing.

III.

IN WITNESS WHEREOF, theſe preſents, conſiſting of this and the preceding pages, written by , on paper duly ſtamped in terms of law, ARE (*with a duplicate hereof,*) SUBSCRIBED by both parties as follows, viz. by the ſaid , at , the day of years, in preſence of theſe witneſſes, and ; AND by the ſaid , at the day of , and year foreſaid, in preſence of theſe witneſſes, , and , the place and date of ſubſcription of the ſaid , and the names and deſignations of the witneſſes thereto, being inſerted by (*name and deſcribe him.*)

E. G. A. A.

THE END.